रजिस्ट्री सं. डी. (डी एन.)-73

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भारत का राजपत्र
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सं० 21] नई दिल्ली, शनिवार, मई 25, 1985/ज्येष्ठ 4, 1907
No. 21] NEW DELHI, SATURDAY, MAY 25, 1985/JYAISTHA 4, 1907

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

(रक्षा मन्त्रालय को छोड़कर) भारत सरकार के मन्त्रालयों द्वारा जारी किये गये सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 10 मई, 1985

शुद्धि-पत्र

का. आ. 2222—भारत के राजपत्र, (असाधारण) भाग II, खण्ड 3, उपखण्ड, (ii), तारीख 20 फरवरी, 1985 के पृष्ठ 2 पर प्रकाशित भारत सरकार के मंत्रिमंडल सचिवालय की अधिसूचना सं. का.आ. 156 (अ), तारीख 20 फरवरी, 1985, के हिन्दी रूपान्तर में निम्नलिखित शुद्धियां की जाती हैं अर्थात् :—

"भोपाल गैस रिसना दुर्घटना" शब्दों के स्थान पर "भोपाल गैस विभीषिका" शब्द रखे जाएं ।

[सं. 27/1/2/85-मंत्रि.]
एच.आर. गोयल, उप सचिव ।

विधि न्याय और कम्पनी कार्य मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 2 मई, 1985

सूचनाएं

का आ 2223—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री रमनीक सिंह सोढ़ी, एडवोकेट जीरा-142047 फीरोजपुर, पंजाब ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया जाता है कि उसे जीरा में व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए ।

2 उक्त व्यक्ति की नोटरी के रूप मे नियुक्त पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप मे मेरे पास भेजा जाए ।

[सं. 5 (11)/84-न्या.]

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Department of Legal Affairs)

New Delhi, the 2nd May, 1985

NOTICES

S.O. 2223.—Notice is hereby given by the Competent Authority in pursuance of rules 6 of the Notaries Rules, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Sodhi Ramnik Singh Advocate, Zira-142047, Delhi Firozpur, Punjab for appointment as a Notary to practise in Zira.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(11)/84-Judl.]

का.आ 2224.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री श्यामा प्रसाद सेन वकील, 236, बिपिन बिहारी गंगुली गली, कलकत्ता-700012, ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया जाता है कि उसे अलिपुर सिविल कोर्ट, व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए।

उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए ।

[सं. 5(40) /84-न्या]

S.O. 2224.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries Rules, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Syama Prasad Sen, Advocate, 236, Bepin Behari Ganguly Street, Calcutta-700012, for appointment as a Notary to practise in Alipore Civil Courts.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(40)/84-Judl.]

नई दिल्ली, 6 मई, 1985

का.आ. 2225.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री केवल कृष्ण शर्मा एडवोकेट, कोट कपूरा रोड, जिला फरीदकोट, मुकटसर (पंजाब) ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया जाता है कि उसे मुकटसर में नोटरी व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए ।

2 उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए ।

[सं. 5 (84)/83-न्या.]

New Delhi, the 6th May, 1985

S.O. 2225.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries Rules, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Kewal Krishan Sharma, Advocate, Kot Kapura Road, District Faridkot, Muktsar Punjab, for appointment as a Notary to practise in Muktsar.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(84)/83-Judl.]

नई दिल्ली, 10 मई, 1985

का.आ. 2226.—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री इकबाल सिंह गिल एडवोकेट, नवांशहर दोआबा पंजाब ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया जाता है कि उसे नवांशहर व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए ।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए ।

[सं. 5(47) / 82-न्या]

New Delhi, the 10th May, 1985

S.O. 2226.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries Rules, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri Iqbal Singh Gill, Advocate Nawashehr, Doaba, Punjab for appointment as a Notary to practise in Nawanshahr.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(47)/82-Judl.]

नई दिल्ली, 13 मई, 1985

का.आ. 2227.—नोटरीज नियम 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री बी. जे. मकाडिया एडवोकेट, जूनागढ़ (गुजरात) ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया जाता है कि उसे जूनागढ़ व्यवसाय करने के लिए नोटरी के रूप में नियुक्त किया जाए ।

2. उक्त व्यक्ति की नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप में मेरे पास भेजा जाए ।

[सं 5 (10) /85-न्या.]
एस. गुप्तू, सक्षम प्राधिकारी

New Delhi, the 13th May, 1985

S.O. 2227.—Notice is hereby given by the Competent Authority in pursuance of rule 6 of the Notaries Rules, 1956, that application has been made to the said Authority, under rule 4 of the said Rules, by Shri B. J. Makadia, Advocate, Junagadh, (Gujrat), for appointment as a Notary to practise in Junagdh.

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this Notice.

[No. F. 5(10)/85-Judl.]

S. GOOPTU, Competent Authority

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बीमा प्रभाग)

नई दिल्ली, 2 मई, 1985

का०आ० 2228.—जीवन बीमा निगम अधिनियम 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा श्री ए के पांड्या अपर सचिव (बीमा) आर्थिक कार्य विभाग वित्त मंत्रालय को 24 अप्रैल, 1985 से श्री एफ०एम०एम० भटनागर के स्थान पर भारतीय जीवन बीमा निगम का सदस्य नियुक्त करती है ।

[एफ संख्या 124 (4)/इंश्यो IV/80/V]
आर० एन० भट्टाचार्य, निदेशक (बीमा)

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Insurance Division)

New Delhi, the 2nd May, 1985

S.O. 2228.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31

of 1956) the Central Government hereby appoints Shri A. K. Pandya, Additional Secretary (Insurance), Department of Economic Affairs, Ministry of Finance as member of the Life Insurance Corporation of India with effect from 24th April, 1985 vice Shri H. M. S. Bhatnagar.

[No. F. 124(4)/Ins. IV/80/V]
R. N. BHATTACHARYYA, Director (Ins.)

(बैंकिंग प्रभाग)

नई दिल्ली, 2 मई, 1985

का.आ. 2229—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि बैंककारी विनियमन (सहकारी समितियां) नियम, 1966 के नियम 10 के साथ पठित उक्त अधिनियम की धारा 31 के उपबंध, को-आपरेटिव सिटी बैंक लि०, गौहाटी पर जहां तक उनका संबंध 30 जून, 1984 को समाप्त होने वाले वर्ष के लिए उसके लेखा परीक्षकों की रिपोर्ट के साथ उसके तुलनपत्र एवं लाभ-हानि विवरण का समाचार पत्रों में प्रकाशन से है, लागू नहीं होंगे ।

[संख्या 18-2/84-ए.सी]
अमर सिंह, अवर सचिव

(Banking Division)

New Delhi the 2nd May, 1985

S.O. 2229.—In exercise of the powers conferred by Section 53, read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declares that the provisions of Section 31 of the said Act, read with Rule 10 of the Banking Regulation (Co-op. Societies) Rules, 1966 shall not apply to the Co-operative City Bank Ltd. Gauhati so far as they relate to the publication of its balance sheet and profit and loss account for year ended the 30th June, 1984 together with the auditor's report in the newspaper.

[No. F.18-2|84-AC]

AMAR SINGH, Under Secy.

नई दिल्ली, 3 मई, 1985

का.आ. 2230.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 8 के उपखंड (1) के साथ पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् श्री बी.के.घोष को 13 मई, 1985 से आरम्भ होने वाली और 12 मार्च, 1988 को समाप्त होने वाली अवधि के लिए देना बैंक के प्रबंध निदेशक के रूप में नियुक्त करती है ।

[सं. एफ. 9/26/85-बी.ओ. I (1)]

New Delhi, the 3rd May, 1985

S.O. 2230.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri B. K. Ghose as the Managing Director of Dena Bank for a period commencing on May 13, 1985 and ending with March 12, 1988.

[No. F.9|26|85-BO.I(1)]

का.आ. 2231.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 7 के साथ पठित खण्ड 5 के उपखण्ड (1) के अनुसरण में, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, श्री बी.के. घोष को, जिन्हें 13 मई, 1985 से देना बैंक के प्रबंध निदेशक के रूप में नियुक्त किया गया है, उसी तारीख से देना बैंक के निदेशक बोर्ड के अध्यक्ष के रूप में नियुक्त करती है ।

[सं. एफ. 9/26/85-बी.ओ. I (2)]
एस०एफ० हसूरकर, निदेशक

S.O. 2231.—In pursuance of sub-clause (1) of clause 5, read with clause 7 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby, appoints Shri B. K. Ghose, who has been appointed as Managing Director of Dena Bank with effect from May 13, 1985 to be the Chairman of the Board of Directors of Dena Bank with effect from the same date.

[No. F.9|26|85-BO. I(2)]
S. S. HASURKAR, Director

नई दिल्ली, 7 मई, 1985

का.आ. 2232.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 की उपधारा (1) के खण्ड (क) और धारा 20 की उपधारा (1) के अनुसरण में, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से, एतद्द्वारा श्री डी.एन. घोष, सचिव, रक्षा उत्पादन एवं पूर्ति विभाग को उनके द्वारा कार्यभार ग्रहण करने की तारीख से लेकर चार वर्ष की अवधि के लिए भारतीय स्टेट बैंक के अध्यक्ष के रूप में नियुक्त करती है ।

[संख्या एफ 8/3/84-बी.ओ.-I]
पी.जी. मांकड, संयुक्त सचिव

New Delhi, the 7th May, 1985

S.O. 2232.—In pursuance of clause (a) of sub-section (1) of section 19 and sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India, hereby appoints Shri D. N. Ghosh, Secetary, Department of Defence Production and Supplies, as the Chairman of the State Bank of India for a term of four years from the date of his taking charge.

[No. F. 8|3|84-BO. I]
P. G. MANKAD, Jt. Secy.

नई दिल्ली, 9 मई, 1985

का.आ. 2233—औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 5 के अनुसरण में, केन्द्रीय सरकार भारतीय औद्योगिक वित्त निगम द्वारा जारी की गई 10,00,00,000 रुपए की अतिरिक्त शेयर पूंजी पर उक्त सरकार द्वारा गारंटीकृत लाभांश की न्यूनतम वार्षिक दर एतद्द्वारा 6% (छः प्रतिशत) निश्चित करती है ।

[संख्या एफ. 2(10)आई एफ-I/84]
के.पी. पांडियन, अवर सचिव

New Delhi, the 9th May, 1985

S.O. 2233.—In pursuance of Section 5 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government hereby fixes the minimum rate of annual dividend guaranteed by the Central Government on the additional share capital of Rs. 10,00 00,000 to be issued by the the Industrial Finance Corporation of India, at 6 % (six per cent).

[F. No. 2(10)IF.I|84]
K. P. PANDIAN, Under Secy.

(केन्द्रीय उत्पाद शुल्क समाहर्तालय, मध्य प्रदेश)

इन्दौर, 30 अप्रैल, 1985

अधिसूचना संख्या 6/85

का.आ. 2234—मध्य प्रदेश समाहर्तालय, इन्दौर के निम्नलिखित अधीक्षक, केन्द्रीय उत्पाद शुल्क, समूह 'ख' निवर्तन की आयु प्राप्त करने पर उनके नाम के आगे दर्शाई गई तिथियों को शासकीय सेवा से निवृत्त हुए —

सर्वश्री

(1) पी. एस. सेनगर	31-3-85(अपराह्न)
(2) श्री. एस. भटनागर	31-3-85(अपराह्न)

[प०सं० II (3) 7-सीए/85/2449]
एस० के० धर, समाहर्ता

(CENTRAL EXCISE COLLECTORATE M.P.)

Indore, the 30th April, 1985

NOTIFICATION NO. 06/85

S.O. 2234.—The following superintendents of Central Excise, Group 'B' having attained the age of Superannuation retired from Government service on the dates shown against each :—

S/Shri	
P.S. Sengar	31-3-85 (A.N.)
V S. Bhatnagar	31-3-85 (A.N.)

[C. No. II(3)7-Con/85/2449]
S.K. DHAR, Collector

MINISTRY OF STEEL, MINES AND COAL

(Department of Coal)

New Delhi, the 6th May, 1985

CORRIGENDUM

S.O. 2235.—Whereas, by the notification of the Government of India in the Ministry of Energy (Department of Coal) No. S.O. 4326 dated the 27th November, 1987, published in the Gaztette of India, Part II, Section 3, Sub-section (ii) at pages 4431 and 4432 issued under sub-section (1) of section 7 of the coal Bearing Areas (Acquisition and Development) Act 1957 (20 of 1957), the Central Government gave notice of its intention to acquire the lands described in the Schedule appended to that notification;

And whereas ,it has been brought to the notice of the Central Government that certain errors of printing nature have occured in the publ'cation of the said notification in the Gazette.

Now therefore, in exercise of the powers conferred by Sub section (1) of section 7 of the said Act and of all other poowers enabling it in this behalf, the Central Government hereby amends the Schedule appended to the said notification as follows :—

At page 4432, in the Schedule,—

(i) for "Serial number Village Thana
1 Churi Burmu,"
read "Serial number Village Thana
1 Churi Burmu" ;

(ii) for "30 to 52 (Part), 53 (Part), 70 (Part), 85 (Part), 99 (Part), 100 to 114, 115 (Part), 116 (Part)" read "30 to 52, 53 (Part), 70 (Part), 85 (Part), 99 (Part), 100 to 114, 115 (Part), 116 (Part)"

(iii) for "117, 18 (Part)"
read "117, 118 (Part)".

Any person interested in any land in respect of which the above amendment has been issued, may, within thirty days of the issue of this notification, object to the acquisition of the whole or any part of the said land, or any right in any of such land in terms of sub-section (1) of section 8 of the said Act.

[No. 19/54/84-CL/CA]

इस्पात, खान और कोयला मंत्रालय

(कोयला विभाग)

नई दिल्ली, 6 मई, 1985

का. आ. 2236.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है,

अतः, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है,

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक स. राजस्व/113/84 तारीख 17 अगस्त, 1984 का निरीक्षण सेन्ट्रल कोलफील्ड्स लिमिटेड, राजस्व अनुभाग, दरभंगा हाउस, रांची-834001(बिहार) के कार्यालय में, या उपायुक्त, हजारीबाग (बिहार) के कार्यालय में अथवा कोयला नियंत्रक, 1-काउन्सिल हाउस स्ट्रीट, कलकत्ता के कार्यालय में किया जा सकता है ।

इस अधिसूचना के अधीन आने वाली भूमि में हितबद्ध सभी व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, राजस्व अधिकारी, सेन्ट्रल कोलफील्ड्स लिमिटेड, दरभंगा हाउस, रांची-834001 (बिहार) को भेजेंगे ।

अनुसूची

दक्षिण चोरधारा ब्लॉक

दक्षिण करनपुरा कोयला क्षेत्र

जिला हजारीबाग (बिहार)

पूर्वेक्षण के लिए अधिसूचित भूमि :

क्र.स.	ग्राम	थाना	थाना सं.	जिला	क्षेत्र एकड़ में	टिप्पणियां
1.	चैनगारा	रामगढ़	57	हजारीबाग	716.00	भाग

कुल क्षेत्र : 716.00 एकड़ (लगभग)
या 289.75 हेक्टर (लगभग)

सीमा वर्णन :

क-ख रेखा, चैनगारा और लपंगा ग्रामों की सम्मिलित सीमा के भाग के साथ-साथ जाती है ।

ख-ग-घ रेखा, चैनगारा ग्राम से होकर जाती है।

घ-ङ रेखा, दामोदर नदी की दक्षिणी सीमा के भाग के साथ-साथ जाती है ।

ङ-क रेखा, चोरधारा और चैनगारा ग्रामों की सम्मिलित सीमा के साथ-साथ जाती है (जो कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 9(1) के अधीन अर्जित चोरधारा ब्लॉक विस्तार और चोरधारा ब्लॉक के साथ सम्मिलित सीमा का भाग बनाती है) और आरम्भिक बिन्दु "क" पर मिलती है ।

[सं. 43019/32/84-सी.ए.]

S.O. 2236:—Whereas it appears to the Central Government that coal is likely to be obtained from the land mentioned in the Schedule hereto annexed

Now, Therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan No. Rev/113/84 dated the 17th August, 1984 of the area covered by this notification may be inspected in the Office of the Central Coalfields Limited, Revenue Section, Darbhanga House, Ranchi-834001 (Bihar) or in the office of the Deputy Commissioner, Hazaribagh (Bihar) or in the Office of the Coal Controller, 1, Council House Street, Calcutta-700001.

All persons interested in the land covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Revenue Officer, Central Coalfields Limited, Darbhanga House, Ranchi 834001, (Bihar) within ninety days from the date of the publication of this notification.

SCHEDULE

SOUTH CHORDHARA BLOC
SOUTH KARANPURA COALFIELD
DISTRICT HAZARIBAGH (BIHAR)

Lands to notified for prospecting .

Serial number	Village	Thana	Thana number	District	Area in acres	Remarks
1.	Chaingara	Ramgarh	57	Hazaribagh	716 00	Part

Total area :— 716.00 acres (approximately)
or 289.75 hectares (approximately)

Boundary description .—

A-B line passes along the part common boundary of the villages Chaingara and Lapanga.

B-C-D lines pass through village Chaingara.

D-E line passes along the part Southern boundary of Damodar River.

E-A line passes along the common boundary of villages Chordhara and Chaingara (which forms part common boundary with Chordhara Block Extension and Chordhara Block acquired under section 9 (1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 and meets at starting point 'A'.

[No. 43019/32/84-CA]

नई दिल्ली, 8 मई, 1985

का. आ. 2237:—केन्द्रीय सरकार, ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) के अधीन जारी की गई भारत सरकार के ऊर्जा मंत्रालय (कोयला विभाग) की अधिसूचना स. का. आ. 1996 तारीख 23 जून, 1984 द्वारा, उस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट परिक्षेत्र में 270 00 एकड़ (लगभग) या 109 26 हेक्टर (लगभग) भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी,

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि में कोयला अभिप्राप्य है

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इससे संलग्न अनुसूची में वर्णित 270.00 एकड़ (लगभग) या 109.26 हेक्टर (लगभग) माप की भूमि का अर्जन करने के अपने आशय की सूचना देती है,

टिप्पण 1 इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. राजस्व 148/84, तारीख 27-10-1984 का निरीक्षण उपायुक्त, हजारीबाग (बिहार) के कार्यालय में या कोयला नियंत्रक, 1 काउंसिल हाऊस स्ट्रीट, कलकत्ता के कार्यालय' में अथवा सेन्ट्रल कोलफील्ड्स लि (राजस्व अनुभाग), दरभंगा हाउस, रांची (बिहार) के कार्यालय में किया जा सकता है ।

टिप्पण 2 कोयला धारक क्षेत्र (अर्जन और विकास अधिनियम,) 1957 (1957 का 20) की धारा 8 के उपबन्धों की ओर ध्यान आकृष्ट किया जाता है जिसमें निम्नलिखित उपबंध है :

8(i) किसी ऐसी भूमि में, जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध कोई भी व्यक्ति अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा ।

स्पष्टीकरण—

इस धारा के अधीनगत किसी व्यक्ति की ओर से यह कहना आपत्ति नहीं माना जाएगा कि वह स्वयं किसी भूमि में कोयला उत्पादन के लिए खनन सक्रियाएं करना चाहता है और ऐसी सक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति द्वारा नहीं की जानी चाहिए ।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी आपत्तिकर्ता को स्वयं सुने जाने का या किसी विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच, यदि कोई है, करने के पश्चात् जो वह आवश्यक समझे, या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्रवाई के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा ।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या ऐसी भूमि में या उस पर के किन्हीं अधिकारों को इस अधिनियम के अधीन अर्जित कर लिया जाता ।"

टिप्पण 3 : केन्द्रीय सरकार ने, कोयला नियंत्रक, 1, काउंसिल स्ट्रीट, कलकत्ता को उक्त अधिनियम के अधीन सक्षम प्राधिकारी नियुक्त किया है ।

अनुसूची

लापगा विस्तार—II

(दक्षिण करनपुरा कोयला क्षेत्र)

जिला हजारीबाग (बिहार)

अर्जित की जाने वाली भूमि

सभी अधिकार

क्र. स.	ग्राम	थाना	थाना स.	जिला	क्षेत्र	टिप्पणिया
1.	बुंडू	मांडू	39	हजारीबाग	270 00	भाग

कुल क्षेत्र 270 00 एकड़ (लगभग)

या 109.26 हेक्टर (लगभग)

बुंडू ग्राम में अर्जित किए जाने वाले प्लाट सं.

560, 562 से 570, 571(भाग), 576 (भाग) और 649(भाग)

सीमा वर्णन :

क-ख	रेखा, दामोदर नदी के बाएं किनारे के भाग के साथ-साथ जाती है ।
ख-ग	रेखा, ग्राम बुंडू और सिरका की सम्मिलित सीमा के भाग के साथ-साथ जाती है ।
ग-घ-ङ	रेखा, बुंडू ग्राम में प्लाट स. 649, 571 और 576 से होकर जाता है (जो सिरका कोयला खान विस्तार के लिए कोयला अधिनियम की धारा 9(1) के अधीन अर्जित क्षेत्र 102 00 एकड़ क्षेत्र की सम्मिलित सीमा बनाता है)
ङ-क	रेखा, बुंडू ग्राम में प्लाट स. 576 और प्लाट स. 562 और 560 की उत्तरी सीमा से होकर जाती है और प्रारंभिक बिन्दु "क" पर मिलती है ।

[सं. 43015/3/85-सी ए]

New Delhi, the 8th May, 1985

S.O. 2237:—Whereas by the notification of the Government of India in the Ministry of Energy (Department of Coal) No. S.O. 1996 dzted the 23rd June, 1984 issued under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to prospect for coal in 270.00 acres (approximately) or 109.26 hectares (approximately) of the lands in the locality specified in the Schedule appended to that notification.

And whereas the Central Government is satisfied that coal is obtainable of the said lands;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the lands measuring 270.00 acres (approximately) or 109.26 hectares (approximately) described in the schedule appended hereto;

Note 1 :—The plan No. Rev. 148/84 dated 27-10-1984 of the area covered by this notification may be inspected in the Office of the Deputy Commissioner, Hazaribagh (Bihar) or in the Office of the Coal Controller, 1, Council House Street, Calcutta-1 or in the Office of the Central Coalfields Limited (Revenue Section), Darbhanga House, Ranchi (Bihar).

Note 2 :—Attention is hereby invited to the provisions of section 8 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), which provides as follows :—

8(1) Any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation :—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different report in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act."

Note 3:—The Coal Controller, 1 Council House Street, Calcutta, has been appointed by the Central Government as the Competent authority under the Act.

SCHEDULE
LAPANGA EXTN II
(SOUTA KARANPURA COALFIELD)
DIST. HAZARI BAGH (BIHAR)

Lands to be acquired
All Rights

Sl. No.	Village	Thana	Thana number	District	Area	Remarks
1.	Bundu	Mandu	39	Hazaribagh	270.00	Part
				Total area 270 acres (approximately) or 109.26 hectares (approximately		

Plot numbers to be acquired in village Bundu :

560, 562 to 570, 571 (Part), 576 (Part) and 649 (Part).

BOUNDARY DESCRIPTION :

A—B	Line passes along the part left bank of river Damodar.
B—C	line passes along the part common boundary of villages Bundu and Sirka.
C—D—E	lines pass through plot numbers 649, 571 and 576 in village Bundu (which forms common boundary of the area acquired under section 9(1) of the Coal Act area 102.00 acres for Sirka colliery extension).
E—A	line passes through plot number 576 and northern boundary of plot numbers 562 and 560 in village Bundu and meets at starting point 'A'.

[No. 43015/3/85—CA]

का. आ. 2238—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है;

अतः, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक सं० राजस्व/139/84 तारीख 10 सितम्बर, 1984 का निरीक्षण सेन्ट्रल कोलफील्ड्स लिमिटेड, (राजस्व अनुभाग), दरभंगा हाउस, रांची के कार्यालय में या उपायुक्त, हजारीबाग (बिहार) के कार्यालय में अथवा कोयला नियंत्रक, 1, काउन्सिल हाउस स्ट्रीट, कलकत्ता के कार्यालय में किया जा सकता है ।

इस अधिसूचना के अधीन आने वाली भूमि में हितबद्ध कोई व्यक्ति उक्त अधिनियम, की धारा 13 की उपधारा (7) में विनिर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को, इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन के भीतर, राजस्व अधिकारी, सेन्ट्रल कोलफील्ड्स लिमिटेड, दरभंगा हाउस, रांची को भेजेगा ।

अनुसूची

मांडू ब्लॉक

उप-ब्लॉक-I और उप ब्लॉक-II

पश्चिम बोकारो कोयला क्षेत्र

जिला हजारीबाग

बिहार

पूर्वेक्षण के लिए अधिसूचित भूमि

उप-ब्लॉक-I

क्र. सं.	ग्राम	थाना	थाना सं.	जिला	क्षेत्र	टिप्पणियां
1.	मांडू	मांडू	114	हजारीबाग	1492.00	भाग
2.	काकाबसौड़ी	,,	115	,,	28.00	,,
3.	कासीखाप	,,	123	,,	330.00	,,
4.	केरेबान्दा	,,	124	,,	31.00	,,
5.	तोपा	,,	126	,,	19.00	,,
6.	बनवार	,,	127	,,	107.00	,,
7.	कुजु	,,	154	,,	9.50	,,

कुल क्षेत्र : 2016.50 एकड़ (लगभग)
या 816.04 हैक्टर (लगभग)

सीमा वर्णन :

क-ख रेखा, मांडू ग्राम से होकर जाती है ।

ख-ग रेखा, सेमरा ग्राम की पूर्वी सीमा के भाग के साथ-साथ जाती है ।

ग-घ रेखा सेमरा और केरेबान्दा ग्रामों की सम्मिलित सीमा के भाग के साथ-साथ जाती है ।

घ-ङ रेखा, केरेबान्दा, कासीखाप और तोपा ग्रामों से होकर जाती है ।

ङ-च रेखा, बनवार ग्राम से होकर जाती है ।

च-छ रेखा, बनवार, कुजु और कासीखाप ग्रामों से होकर जाती है (जो कुजु कोयला खान में मिलकर सम्मिलित सीमा का भाग बनाती है) ।

छ-ज रेखा, कासीखाप और हेसागोरा ग्रामों की सम्मिलित सीमा के भाग के साथ-साथ जाती है (जो हेसागोरा कोयला खान की सम्मिलित सीमा का भाग बनाती है) ।

ज-झ रेखा, हेसागोरा और मांडू ग्रामों की सम्मिलित सीमा के भाग के साथ-साथ जाती है (जो हेसागोरा कोयला खान से मिलकर सम्मिलित सीमा का भाग बनाती है) ।

झ-ट-ठ रेखा, मांडू और काकाबसौड़ी ग्रामों से होकर जाती है (जो कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 9 के अधीन अजित पुन्डी ब्लाक से मिलकर सम्मिलित सीमा बनाती है) ।

ठ-क रेखा, काकाबसौड़ी और मांडू ग्रामों से होकर जाती है और आरम्भिक बिन्दु "क" पर मिलती है ।

उप-ब्लॉक-II

क्र.सं.	ग्राम	थाना	थाना सं.	जिला	क्षेत्र	टिप्पणियां
1.	कुजु	मांडू	154	हजारीबाग	40.00	भाग
2.	पोखरिया	,,	121	,,	67.00	भाग

कुल क्षेत्र : 107.00 एकड़ (लगभग)
या 43.30 हैक्टर (लगभग)

सीमा वर्णन

ड-ढ रेखा, कुंजु ग्राम से होकर जाती है (जो कुंजु कोयला खान से मिलकर सम्मिलित सीमा बनाती है),

ढ-ण-त रेखा, कुंजु और पोखरिया ग्रामों से होकर जाती है (जो मुरपा कोयला खान से मिलकर सम्मिलित सीमा का भाग बनाती है)

त-थ रेखा, आरा और पोखरिया ग्रामों की सम्मिलित सीमा के भाग के साथ-साथ जाती है ।

थ-द रेखा, नदी की मध्य रेखा के साथ-साथ जाती है (जो पोखरिया और बोंगहारा ग्रामों की सम्मिलित सीमा बनाती है) ।

द-ड रेखा, नदी की मध्य रेखा के साथ-साथ जाती है (जो कुजु और हेसागोरा ग्रामों की सम्मिलित सीमा का भाग बनाती है और हेसागोरा कोयला खान की सीमा का भाग बनाती है) और आरंभिक बिन्दु "ड" पर मिलती है) ।

[सं. 43015/8/85-सी.ए.]
समय सिंह, अवर सचिव

S.O.2238.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein;

2. The plan No. Rev/139/84 dated 10th September, 1984 of the area covered by this notification can be inspected in the office of the Central Coalfields Limited (Revenue Section), Darbhanga House, Ranchi, or in the office of the Deputy Commissioner, Hazaribagh (Bihar), or in the office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Revenue Officer, Central Coalfields Limited, Darbhanga House, Ranchi, within 90 days from the date of publication of this notification.

SCHEDULE

Mandu Block

Sub-block I and sub-block II

West Bokaro Coalfield

Distt. Hazaribagh

Bihar

Sub-Block-I (Lands notified for prospecting)

Sl. No.	Village	Thana	Thana number	District	Area	Remarks
1.	Mandu	Mandu	114	Hazaribagh	1492.00	Part
2.	Kekebasaudi	-do-	115	-do-	28.00	,,
3.	Kasikhap	-do-	123	-do-	330.00	,,
4.	Kerebanda	-do-	124	-do-	31.00	,,
5.	Topa	-do-	126	-do-	19.00	,,
6.	Banwar	-do-	127	-do-	107.00	,,
7.	Kuju	-do-	154	-do-	9.50	,,

Total area : 2016.50 acres (approximately)
or 816.04 hectares (approximately)

Boundary description :

A—B line passes through village Mandu.

B—C line passes along the part eastern boundary of village Semra.

C—D line passes along the part common boundary of villages Semra and Kerebanda.

D—E line passes through villages Kerebanda, Kasikhap and Topa.

E—F line passes through village Banwar.

F—G line passes through villages Banwar, Kuju and Kasikhap (which forms part common boundary with Kuju Colliery).

G—H line passes along the part common boundary of villages Kasikhap and Hesagora (which forms part common boundary with Hesagora Colliery).

H—I line passes along the part common boundary of villages Hesagora & Mandu (which forms part common boundary with Hesagora Colliery).

I—J—K lines pass through villages Mandu and Kekebasaudi (which forms common boundary with Pundi Block acquired under Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957.

K—A line passes through villages Kekebasaudi and Mandu and meets at starting point 'A'.

Sub-Block-II

Sl. No.	Village	Thana	Thana number	District	Area	Remarks
1.	Kuju	Mandu	154	Hazaribagh	40.00	Part
2.	Pokharia	-do-	121	,,	67.00	,,

Total area : 107.00 acres (approximately)
or 43.30 hectares (approximately)

Boundary description :

M—N line passes through village Kuju (which forms common boundary with Kuju Colliery).

N—O—P lines pass through villages, Kuju & Pokharia (which forms part common boundary with Murpa Colliery).

P—Q line passes along the part common boundary of villages Area and Pokharia.

Q—R line passes along the central line of the River (which forms common boundary of villages Pokharia & Bongahara).

R—M line passes along the part central line of the River (which forms part common boundary of villages Kuju and Hesagora and also along part Hesagora Colliery boundary) and meets at starting point 'M'.

[No. 43015/8/85-CA]
SAMAY SINGH, Under Secy.

पेट्रोलियम मंत्रालय

नई दिल्ली, तारीख 20 मई, 1985

का. आ. 2239—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्न सारणी के स्तंभ (1) में वर्णित अधिकारी को, जो सरकार के राजपत्रित अधिकारी की पंक्ति के समतुल्य कानूनी अधिकारी का एक पद है, उक्त अधिनियम के प्रयोजनों के लिये संपदा अधिकारी नियुक्त करती है, जो उक्त सारणी के स्तंभ (2) में विनिर्दिष्ट सरकारी स्थानों की बाबत उक्त अधिनियम द्वारा या उसके अधीन संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग और उस पर अधिरोपित कर्तव्यों का पालन करेगा।

सारणी

अधिकारी का नाम और पदनाम	सरकारी स्थानों के प्रवर्ग और अधिकारिता की स्थानीय सीमायें
1	2
प्रबंधक (कार्मिक और प्रशासन) बामेर लारी एंड कंपनी लिमिटेड 5 जे. एन हेरेडिया मार्ग, बेलार्ड एस्टेट, मुम्बई—400038	"बृहत्तर मुम्बई" "महाराष्ट्र" शहर की नगरपालिक सीमाओं के भीतर बामेरलारी एंड कपनी लिमिटेड, के या उसके द्वारा या उसकी ओर से पट्टे पर लिए गए या अधिग्रहीत किए गए स्थान।

[सं. पी. 44020/16/85-मार्के.]
श्रीमती किरण चड्ढा, अवर सचिव,

MINISTRY OF PETROLEUM

New Delhi, the 20th May, 1985

S.O.2239.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants Act, 1971 (40 of 1971) the Central Government hereby appoints the officer mentioned in column (1) of the table below, being office of a statutory authority, equivalent in rank to a gazetted officer of Government, to be estate officer for the purposes of the said Act, who shall exercise of the powers conferred and perform the duties imposed on estate officer by or under the said Act, in respect of the premises specified in column (2) of the said table :

THE TABLE

Name and Designation of the Officer	Categories of Public Premises and local limits of Jurisdiction
(1)	(2)
Manager (Personnel and Administration), Balmer Lawrie & Co. Limited, 5 J N. Heredia Marg, Ballard Estate, Bombay-400038	Premises belonging to or taken on lease or requisition by or on behalf of Balmer Lawrie & Co. Ltd., within the municipal limits of the city of "Greater Bombay", "Maharashtra".

[No. P-44020/16/85—Mkt.]

MRS. KIRAN CHADHA, Under Secy

श्रम मंत्रालय

नई दिल्ली 6 मई 1985

शुद्धि पत्र

का०आ० 3240—भारत के राजपत्र दिनांक 22 सितम्बर, 1984 के पृष्ठ 2829 पर का आ संख्या 3034 पर प्रकाशित श्रम विभाग की अधिसूचना संख्या एल-20012(444)/81-डी-III/ए दिनांक 1.9.1984 में केन्द्रीय सरकार औद्योगिक अधिकरण (संख्या 2) धनबाद के पंचाट की अनुसूची के नीचे दिए गए अनुबंध में कृपया निम्नलिखित क्रमांक के नाम को क्रमांक 7 के रूप में जोड़ दिया जाए, अर्थात—

"7 मनगर महतो"

[संख्या एल-20012/444/81-डी-III (ए)]

ए वी एस शर्मा डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 6th May, 1985

CORRIGENDUM

S.O. 2240.—In the Annexure below the Schedule to the Award of the Central Government Industrial Tribunal (No.2) Dhanbad, published under the Department of Labour Notification No. L-20012(444)/81-D III/A dated 1-9-1984, with S.O. No. 3034 in the Gazette of India, dated the 22nd September, 1984 at page 2829, please insert the following as S. No. 7 with the name of the workman as below namely

"7 Managar Mahato".

[No. L-20012/444/81-D III(A)]

A. V. S SARMA, Desk Officer

179 GI/85—7

नई दिल्ली, 6 मई, 1985

का आ 2241—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चांदामेटा कोलियरी वैस्टर्न कोलफील्ड्स लि., डाक पारेसिया, जिला-छिन्दवाड़ा (एम. पी.) के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1.5.85 को प्राप्त हुआ था।

New Delhi, the 6th May, 1985

S.O. 2241.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur (MP), as shown in the Annexure in the industrial dispute between the employers in relation to the management of Chandametta Colliery of Western Coalfields Ltd., P.O. Parasio, Dist. Chhindwara and their workmen, which was received by the Central Government on the 1st May 1985.

BEFORE JUSTICE SHRI K. K. DUBE, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(41)/1981

PARTIES :

Employers in relation to the management of Chandametta Colliery of Western Coalfields Limited, P. O. Parasia, District Chhindwara (M.P.) and their workmen represented through the M.P.R.K.K.M Sangh (INTUC), Chandametta, P.O. Parasia, District Chhindwara (M.P.).

APPEARANCES :

For Union.—Shri S. K. Rao, Advocate.

For Management.—Shri P. S. Nair, Advocate.

INDUSTRY : Coal. DISTRICT : Chhindwara (M.P.).

AWARD

Dated : April, 20th 1985

The Central Government in exercise of its powers conferred under Sec. 10 of the Industrial Disputes Act 1947 referred the following dispute for adjudication, vide Notification No. L-22012(33)/80-D. IV(B) dated 2nd November, 1981 :—

"Whether the dismissal of Shri Vikram S/o Shri Farai, Tub-loader, Chandametta Colliery of WCL., P.O. Parasia, District Chhindwara as per management's letter No. DCME C AE/20579 dated 28-12-79 is legal and justified ? If not, to what relief is the workman entitled ?"

2 Vikram S/o Shri Farai, Tub-loader Chandametta Colliery of WCL, P.O. Parasia, District Chhindwara was charged of comitting various misconducts. They were for behaving in an disorderly manner under 18(1), for abusing and intimidating an employee of the colliery and for assaulting him being a misconduct under 18(1), for inciting the workers to commit assault being misconduct under 18(1)(t) and for taking part in an illegal strike and also inciting other workers to join the illegal strike. He was also charge sheeted for assaulting Ganga Mata and Shri B. N. Verma, Manager, Chandametta Colliery and for raising exhortations that unless a decision was taken regarding Ganga Mate, the workers would go on strike. One Shri Balbir Singh was appointed Enquiry Officer. Shri Balbir Singh after issuing a notice of enquiry on 10-5-1978 held the enquiry on 14-5-1978. Vikram along with his co-worker Shri Bhardwaj appeared before the Enquiry Officer. After the evidence was taken the Enquiry papers were put up before the Agent who came to the

conclusion that the delinquent workman had committed serious misconduct and ought to be dismissed from services. The management accordingly by its letter dated 28-12-1978 dismissed the workman from services.

3. The workman raised the industrial dispute and in due course it had been referred to this Tribunal, for adjudication as stated above.

4. Shri Nair, learned Counsel for the management raised a preliminary objection as to the tenability of the reference before me. He contended that the Central Government by its order dated 2nd November, 1981 directed adjudication of the matter under Sec. 10 of the I.D. Act but by subsequent order dated 7th December, 1981 the Government of India sought to revoke the order passed. The subsequent order dated 7-12-1981 reads as under :—

> "The undersigned is directed to refer to the Ministry of Labour O.M. No. L-22012(33)|80-ID.IV(B) dated 18-8-81 on the above subject and to forward herewith a copy of letter No. WCL|IP|PEF|MIN|555| 13884-85 dated 28-11-81, 4-12-81 received from the Western Coalfields Ltd. This department agree with the views of the WCL and feel that it is not a fit case to be referred to the arbitration adjudication.".

Learned Counsel argued that the Central Government had full right to review its order passed earlier and could revoke the order. The subsequent order had the effect of cancelling the reference made. Therefore there is no valid reference under Sec. 10 before me. In my opinion, this contention has no force. Having made the reference validity on 2nd November, 1981 this Tribunal was seized of the jurisdiction to adjudicate upon the dispute. There is no provision under the I.D. Act or at least none has been pointed out to me under which having made the reference the Central Government had powers to withdraw it. It is another matter that the Central Government refuses to make a reference and subsequenly reviews its order and makes a reference. In such cases the Government was competent to reconsider its own decision and make a reference in supersession of the earlier order. However, the position would be different if the reference had been duly made and the order had been notified because in such cases the provisions of Industrial Disputes Act were attracted and the matter had to be decided in accordance with the provisions of the I.D. Act. The dispute then became the subject matter of judicial enquiry under the Industrial Disputes Act and had to be adjudicated upon in accordance with the provisions of that Act. The Central Government had no power under the I.D. Act to restrain the Industrial Tribunal from making the adjudication. The subsequent order dated 7-12-1981 is, therefore, incompetent and is ineffective.

5. By an order dated 19th October, 1983 I came to the conclusion that the domestic enquiry was vitiated for reasons given in that order. I had, however, permitted the parties to lead such evidence to proved the misconduct as they deemed fit. Thereafter the evidence was led and the sole question before me now is whether on the evidence led the charges against Vikram could be said to have been proved and the misconduct was such as merited dismissal from services. The case mainly rests on the oral evidence adduced before me.

6. The delinquent workman tendered the evidence of Jangaliya, Pakhandi Shiv Prasad Dehariya and Gangaram Paul and also his evidence. Jangaliya does not say anything about the incident. Similarly Pakhandi stated that he cannot say if any incident relating to beating Verma had taken place on 4-4-1978. Though Pakhandi had been charge-sheeted for similar misconducts as Vikram, he is unwilling now to say anything relating to the incident. Then we come to the evidence of Shiv Prasad Dehariya. He had supported Vikram. According to his evidence on 4-4-1978 there was some heated talk between Ganga Mate and Ramuttin near the office. This was in presence of nearly 150 workers. He stated that he was in the Manager's office and he would not be able to say whether Vikram and Pakhandi were amongsts the crowd. He, however, deposed that Saini was with him. Saini had therefore gone away from the place of occurrence. Now some noise was being made by workers and therefore Gangaram and Shri Verma, the Manager, came out of the office. The workers were quarrelling among themselves outside the office. Shri Verma fearing that this squibble may not develop into a Marpeet moved backward to reach his office and in doing so he tripped over and fell down. He injured his finger. The injury was not on account of any assault made by Vikram or anyone-else. Verma then closed the doors of his office.

7. This witness had gone away from the place of occurrence and Verma had come out of his office to know what had happened outside and he had fallen and thereby injured his finger. He had not been assaulted by any one. Workers in the colliery were expected to be on duty at about 8 a.m. and half an hour was taken for detailing them to various duties. The incident, as stated by him, happened at about 9 a.m. when numerous persons were present. The other witness produced by the workman is Gangaram Paul. He was on duty on 4-4-1978 in the Lamp Room at no. 6 Incline. The workers were complaining about the distribution of coal by Ganga Mate. The workers were raising a demand that unless the matter was settled as regards Ganga Mate they would go on strike. According to this witness he pacified hem and assured them that the matter would be sortedout. At about 9-9-15 the Agent and the Asstt. Manager came out of the office. He was called by them and he told them that the workers were not satisfied because of the irregularities in the coal distribution. The Agent therefore asked Saini to call Ganga Mate. Saini now went away to the token office. Suddenly after about 15 minutes they heard some noise outside the office. Hearing the disturbance Shiv Prasad Dehariya and Mr. Verma came out of the office to find out the cause. He also came out. They found that Ganga Mate had been surrounded by the labourers. Verma then retreated moving backwards and tripped over injuring his finger. He then went inside his room and closed the doors. Vikram at this time was near the Token Office Window i.e. to say that he would be about 50-60 ft. away from where Verma had fallen. In the cross-examination the witness stated that the workers had not gone on strike on 4-4-1978. The workers were shouting about their grievance some 150 away from the office and Vikram had not been taking any part in inciting the workers for going on strike or for beating Ganga Mate. The versions and the version given by the delinquent workman would show that Vikram was sought to be falsely implicated by the Manager who because of his own fault had fallen and had not been assaulted by Vikram with a Shovel. In fact, according to these witnesses, Vikram was not even amongsts the crowd of the workmen raising the demand that the distribution of coal must be regularised. It may be stated here that a criminal case was started against Vikram for assaulting the Manager with Shovel. In this criminal case he had been acquited by the Magistrate, a certified copy of which has been filed in this case. It may be stated that the criminal charges against the delinquent workman were for assaulting the Manager under the same set of cricumstances as in the departmental enquiry. The decision in the criminal case was made subsequently.

8. The witnesses produced to prove the charges by the management are Badri Prasad, Balbhim Singh Saini and Srinivas Mishra and B. N. Verma of the Colliery. Badri Prasad admitted that at about 1 a.m. on one day in April Vikram loader was present near Incline No. 6 and he was asking workers not to go to work. He was exhorting that the issue regarding coal distribution must be settled. When Ganga Babu came there Bamuttin caught hold of Ganga's shirt and Vikram exhorted that he should be beaten. Vikram then started beating Ganga Babu with Shovel. The workers had surrounded Ganga Babu Gagaram had not been medically examined and the workman is charged of misconduct for beating Ganga Mate. Though it is suggested by the management's witnesses that two police officers were present at the time of incident, they did not do anything or took any action. When Verma came out of the office the crowed let go Ganga and rushed towards Verma. Vikram assaulted Verma with his Shovel on his head. Now Verma does not say that he came out in the open or that he left the verandah. Therefore if Vikram were to beat him with Shovel the low roof of the verandah would come in the way. It is surprising

that the two police men present did not do anything. The version looks improbable. He admitted that he had his duties in the underground mine yet he was present at about 9 O' Clock in the morning near the office. He is a category IV workmen and it is surprising that neither he nor Saini, who according to him was present nor yet the two police men did anything to prevent Vikram from assaulting the Manager. This version is not convincing. The other witness Saini who stated that he noticed the crowd in front of the office on 4-4-1978. He learnt that labourers had struck work and therefore he invited the representatives to come and talk to him. Vikram who was outside shouting that Verma may be called and that they will talk with Verma. He therefore phone Shri Verma and Shri Verma came at about 9.15—9.30. He them informed Shri Verma that the labourers were seeking to go on strike and that they want to talk to him regarding the distribution of coal by Ganga Mate. Ganga Mate was, therefore, called. When Ganga Mate was approaching towards the office some of the labourers including Vikram rushed at him saying that he must be beaten. Ganga was assaulted and came towards the office. In the meantime Shri Verma came out. Vikram then shouted that the trouble was on account of Shri Verma and he should be beaten saying that he rushed at him with is shovel at his hand. Shri Verma was in the verandah. He was attacked with the shovel by Vikram. Now this version is entirely different from other witnesses. Even the management's witnesses say that Saini was inside the room along with Shri Verma. The version of Verma is also entirely different with the other and there is a great disparity in regard to the occurrence.

9. Srinivas Mishra stated that he was posted at Barkui Thana Parasia as a Sub-Inspector and he can recall the incident that had happened on 4-4-1978 at the mine. He says that he was present by chance as the phone of Thana was not working. When he had reached he found that the employees of the colliery were sitting at the mouth of the Incline and that they were not working. He found Agent, the Manager and Saini and the representatives of the Union were engaged in discussion. They wanted Gangaram employee of the Colliery who was entrusted the duties of coal distribution to be discontinued. The workers then assaulted Gangaram. At the same time Verma also came out of his office and one of the workers assaulted him with a shovel. According to this witness workers engaged in discussion as regards the settlement of the coal distribution. This is a new story that has come up. While Saini and other witnesses say that Shri Verma came out of the room and then he was assaulted, according to this witness some discussions were going on with Verma, Agent and the Asstt. Manager on one hand and the workers on the other, when this unhappy incident took place. There variations show that somehow they want to implicate Vikram. If this versions were true there were many other workmen who could protect the Manager from the assault by Vikram and it appears unlikely that when the negotiations were going on Vikram would try to assault the Manager, more so in presence of the two policemen. Though the incident pertains to a criminal offence the two police men who were present did not enter the incident into Roznamcha. He also does not deposed about Vikram exhorting the other workmen to go on strike. The allegations about the exhortation are very easy to be made. If such exhortations were made at least the two police officers could not have missed. The evidence of the management's witnesses varies in material particulars as regards the circumstances under which Vikram assaulted Verma.

10. Unless there is cogent and clear version regarding the circumstances under which such an assault could have taken place the evidence of the witnesses that they saw assault on Verma with a shovel could not be accepted. They were bound to observe the various circumstance preceding the assault and the witnesses have tried to give different version regarding this. Therefore it follows that none of them was really seen the incident nor can it be said that the incident actually took place. I may also take the evidence of Mr. B. N. Verma, the Manager. According to him he was in the main office on 4-4-1978 at about 8.30 a.m. Loaders struck work at no. 6 incline. He took the Labour Officer Shri Srivastava, with him and went with him to the troubled spot which is about 3 Kms. He then went inside the office and called the Union leaders. He was trying to know the cause of the trouble and he had called Ganga Mate. There was a crowd of workers standing in front of the office. The workers then started assaulting Ganga Mate. He came out of the office and Vikram then tried to assault him with the shovel. He warded off blow with his hand and therefore received injury. He had tried to show in cross-examination that Vikram had given him four blows with the shovel. I need not again repeat that the incident does not seem probable, more so when the two police men were present. The evidence of the workmen seem more natural and probable. I am of the opinion that the exhortation part of misconduct nor the assault on the Banager have been proved on the evidence adduced. In a criminal case the charge has to be proved beyond reasonable doubt. I am aware that though the Magistrate has acquitted the accused of all the charges holding that the charges were not proved I was bound to examine all evidence led by the management to see whether on totality of the evidence before me reasonably it could be held that Vikram committed any misconduct. My answer would be in the negative for the reasons already stated above.

ORDER :—

The management has failed to establish the charges of misconduct against Viktam S|o Shri Fatai. He would be reinstated in the circumstances of the case with half back wages. He would also be entitled to Rs. 100 as costs.

K. K. DUBE, Presiding Officer
[No. L-22012(33)|80-D. IV(B)]

नई दिल्ली, 7 मई, 1985

का.आ. 2242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वैस्टर्न कोलफील्ड्ज लि. पैन्च, एरिया, के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट का प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-85 को प्राप्त हुआ था।

New Delhi, the 7th May, 1985

S.O. 2242.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Western Coalfields Limited Pench Area, and their workmen, which was received by the Central Government on the 1st May, 1985.

BEFORE JUSTICE SHRI K. K. DUBE, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M. P.).

Case No. CGIT|LC(R)(8)|1984

PARTIES :

Employers in relation to the management of Western Coalfields Ltd., Pench Area, Distt. Chhindwara and their workman, Kamlesh Singh, represented through the M.P. R.K.K.M. Sangh (INTUC) Chandametta Post Office Parasia, Distt. Chhindwara (M. P.).

APPEARANCES :

For Union.—Shri Lakhanlal Murlidhar.

For Management.—Shri Deepak Mewar, Deputy Personnel Manager.

INDUSTRY : Coal. DISTRICT : Chhindwara (M. P.).

AWARD

Dated : April 24th, 1985

The Central Government in exercise of its power under Sec. 10 of the Industrial Disputes Act, 1947 referred the

following dispute for adjudication, vide Notification No. L-22012(86)/82-D. III. B/D/IV. B, dated 5th January 1984 :—

"Whether the action of the management of WCL, Pench Area in relation to their Newton Chickli 'B' Colliery in verbally terminating the services of Shri Kamlesh Singh S/o Shri Tapesher is justified ? If not, to what relief the workman is entitled."

2. The dispute here concerns the termination of services of Kamlesh Singh. He was working as a Mechanical Fitter in the Newton Chickli Colliery under Western Coalfields Ltd. Pench Area. After notice to both the parties they thought it fit to amicably settle the matter. They have also filed a settlement signed by both the parties and their Counsel. I have gone through the matter and the settlement and find that the terms of the settlement are reasonable, fair and proper. I, therefore, make the following award in terms of the settlement.

ORDER :—

(1) Kamlesh Singh will be allowed to join the duty as Fitter Helper in any of the mines in the Pench Area where the services of such workmen are required on the same wages as he was drawing at the time his services were terminated.

(2) When he joins services this will be treated as reinstatement but the period during which he had not actually worked would be treated as dies non and for this period he would not get any pay on the principle of no work no pay. However, for all other purposes the continuity in service shall be maintained. However, since the management has to contribute towards gratuity and since the workman did not work for this period no amount of gratuity shall be paid to the workman for the period of absence. But he shall start earning gratuity after he joins service.

(2) Kamlesh Singh will not be paid any back wages for the period he remained idle and unemployed. He will also be precluded from raising any dispute in respect of the wages for this idle period.

(4) He will report for duty to the Manager of the Colliery. He will be informed by the Deputy Chief Personnel Manager or the General Manager the Colliery where he has to join the services. This may be done within 15 days from today. Deepak Newar Dy. Personnel Manager takes notice of this clause of settlement and undertakes to inform the management about it.

(5) It is also settled that such cases shall not be treated as precedent in respect of other workmen.

There shall be no order as to costs.

K. K. DUBE, Presiding Officer

[No. L-22011/86/82-D. III(B)/D. V]

नई दिल्ली, 13 मई, 1985

का. आ. 2243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, भारत कोकिंग कोल लि. की अंगारपत्तर कोलियरी के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-1985 को प्राप्त हुआ था।

New Delhi, the 13th May, 1985

S.O. 2243.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Angarpathra Colliery of M/s. Bharat Coking Coal Limited, and their workmen, which was received by the Central Government on the 8th May, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

REFERENCE NO. 38 OF 1984

In the matter of Industrial Disputes under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Angarpathra Colliery of Messrs Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the employers—Shri B. Joshi, Advocate.
On behalf of the workmen—None.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, dated the 30th April, 1985

AWARD

The Government of India in the Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-20012(151)/84-D.III(A) dated the 20th July, 1983.

SCHEDULE

"Whether the action of the management of Angarpathra Colliery of Messrs Bharat Coking Coal Limited in paying Category-III wages to Shri Bageshwar Lal, Fan-cum-Switch Board Attendant, is justified? If not, to what relief is the said workman entitled?"

Inspite of the Regd. notice issued to the union which had raised the industrial dispute, there was neither any appearance nor any W.S. was filed on their behalf. Shri B. Joshi, Advocate appeared for the employers and filed his W.S. inspite of 11 adjournments given in the case the workmen did not appear. It appears, therefore that the workmen were not interested to contest the case and accordingly the case was closed. As inspite of the Regd. notice the workmen did not appear in the case it appears that they have no case and are not interested in contesting the reference and as such I hold that the action of the management of Angarpathra Colliery of Messrs Bharat Coking Coal Limited in paying Category-III wages to Shri Bageshwar Lal, Fan-cum-Switch Board Attendant, is justified and the concerned workman is not entitled to any relief.

J. N. SINHA, Presiding Officer

[No.L-20012(151)/84-D.III(A)]

का. आ. 2244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, कुजू क्षेत्र में सेंट्रल कोलफील्ड्स लि. की धारा तथा मरुबेरा कोलियरीज के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-1985 को प्राप्त हुआ था।

S.O. 2244.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation

to the management of Ara & Sarubera Collieries in Kuju Area of M|s. Central Coalfields Limited, and their workmen, which was received by the Central Government on the 8th May, 1985.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI I. N. SINHA, Presiding Officer.

REFERENCE NO. 1 OF 1984

In the matter of Industrial Disputes under Section 10(1) (d) of the I. D. Act, 1947.

PARTIES

Employers in relation to the management of Ara & Sarubera Collieries in Kunju Area of Messrs. Central Coalfelds Ltd. and their workmen.

APPEARANCES:

On behalf of the employers: Shri R. S. Murthy, Advocate.

On behalf of the workmen: Shri B. Joshi, Advocate.

STATE: Bihar INDUSTRIAL: Coal

Dated, Dhanbad, the 30th April, 1985.

AWARD

The Government of India in the Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-20012(293)|82-D. III (A), dated the 6th January, 1984.

SCHEDULE

1. "Whether the action of the management of Ara Colliery of Messrs. Central Coalfields Limited, Post Office Kunju District Hazaribagh in dismissing Shri Ramakant Pathak, Security Guard from their services with effect from 3rd December 1980 was justified? If not, to what relief is the said workman entitled and from what date?"

2. Whether the action of the management of Sarubera Colliery of Messrs Central Coalfields Limited, Post Office Kuju, District Hazaribagh in dismissing from their services, Shri Bhoodeo Banerjee, Clerk Grade-III with effect from 9th December, 1980 was justified? If not, to what relief is the said workman entitled and from what date?"

The case of the two concerned workman is that the action of the management of M|s. CCL in dismissing them from their services are illegal, arbitrary and unjustified and that they have been victimised for their legitimate trade union activities. The management concocted a case of attempted theft of box containing 25 KG explosives and 300 Nos. of detonators at about 8 P.M. on 30-7-80 from the explosive magazine situated at Ara Colliery and that the said explosives were recovered from outside the compound wall. The concerned workmen had no connection with the said alleged theft. The management had implicated them in a criminal case and attempted theft of explosive materials and lodged FIR before the police. The police had initiated prosecution against the two concerned workmen under Section 379 and 411 of the I.P.C. and the said criminal case was registered as GR 1249 of 1980. On 16-7-82 the trying Magistrate acquitted the concerned workmen from the charges levelled against them. In the chargsheet dated 31-7-80 the management alleged that Shri Ramakant Pathak was on duty in the second shift on 30-7-80 from 4 P.M. to 12 mid night and during that period committed the theft of one box containing 25 Kg of explosive and 300 detonators by opening the lock of the magazine after taking the key from Shri Bhoodeo Banerjee with his connivance. The allegation against the other concerned workman Shri Bhoodeo Banerjee is that he connived and assisted Shri Ramakant Pathak in commissioning of the above offence of theft and he illegally handed over the key to Shri Ramakant Pathak after obtaining the key from Shri Hari Narayan Prasad. The concerned workmen has submitted their replies denying the allegations levelled against them. The management held a preliminary departmental enquiry in contravention of the principles of natural justice and the enquiry report was got up to suit the management's policy of victimisation. The concerned workmen were dismissed from services on the basis of perverse findings of the Enquiry Officer.

The allegations in the FIR lodged by the Project Officer before the Office Incharge Kuju out post was that two culprits were making attempt to commit theft of explosive and detonators and they jumped of the compound wall leaving the box within the compound wall of the magazine. The allegation in the chargesheet was that the box containing explosive and detonators were recovered from outside the compound wall. Thus the two documents namely the FIR and the chargesheet were inconsistent with each other and indicate that the management had fabricated the charges with the assistance of the interested persons. The Police did not produce any seizure memo before the trial court and the management also failed to produce any seizure memo before the departmental enquiry to show that explosive and the detonators were recovered within the compound wall of outside the compound wall. There is no evidence to show that there was shortage of explosives and detonators in the magazine. The enquiry Officer acted at the instance of the management to hold the concerned workman guilty of the charges levelled against them.

The management had appointed one clerk from Ara Colliery and another clerk from Surubera Colliery for issue explosives for both the collieries for all the three shifts. An explosive issue clerk is not posted in all the three shifts although explosives are required in all the three shifts in both Ara and Sarubera Colliery. The two clerks and the guards make mutual arrangement for issue of explosives and detonators so as to avoid disruption of production in both the collieries. The dismissal of the concerned workmen is illegal and unjustified. They are entitled to be reinstated with full back wages and other benefits. The past services of the concerned workmen were clean and the punishment imposed is too severe.

The case of the management is that Shri Ramakant Pathak, Security Guard of Ara Colliery was issued with a chargesheet dated 31-7-80 by the Project Officer|Agent of Ara Colliery and pending enquiry into the charges he was placed under suspension. Shri Ramakant Pathak submitted his explanation dated 11-8-80 which was duly considered by the Project Officer|Agent and found the explanation not satisfactory and he ordered for an enquiry and appointed Shri B. C. Jha, Dy. Personnel Manager of Kuju Ara as Enquiry Officer. Shri Bhoodeo Banerjee clerk Grade-III|Explosive Issuer of Sarubera Colliery was issued with a chargesheet dated 31-7-80 by the Project Officer|Agent Sarubera Colliery and pending enquiry into the charges he was placed under suspension. Shri Bhoodeo Banerjee submitted his explanation dated 11-8-80 which was duly considered by the Project Officer|Agent of Sarubera Colliery and found the explanation unsatisfactory and orderd for a domestic enquiry and appointed Shri B. C. Jha. Dy. Personnel Manager, Kuju Area as Enquiry Officer. Both the concerned workmen participated in the enquiry and took the assistance of their colworkers. The management's witnesses were examined in presence of the concerned workmen and full opportunity was given to them to cross-examine the management's witness. The concerned workmen also gave their statement and when specifically asked whether they have to examine any witness in defence they replied in the negative. The enquiry was held in which all possible opportunities were given to the workmen to defend themselves and the principles of natural justice were adhered to. The enquiry officer submitted his report on the basis of the enquiry held by him in which he held that the concerned workmen were guilty of the charges framed against them. The report of the enquiry Officer was considered separately by the Project Officer

Agnt Ara Colliery and Sarubera Colliery and after carefully considering the report of the enquiry officer, the evidence recorded by the enquiry Officer and other connected papers, the findings of the Enquiry Officer were accepted and seeing the gravity of misconduct proved against each of the concerned workmen the Project Officer/Agent of the concerned Collieries passed the order of dismissal from services against the concerned workmen. Shri Ramakant Pathak was dismissed from services by the Project Officer/Agent, Ara Colliery with effect from 3-12-80 and Shri Bhoodeo Banerjee was dismissed from service by the Project Officer Sarubera Colliery with effect from 9-12-80. The charges proved against the concerned workmen were serious in nature specially the explosives were likely to be used for various criminal and anti-social activities and against the national interest and action taken by the management in dismissing the two concerned working is fully justified. The action of the management in dismissing two concerned workmen is perfectly legal, valid and justified and the concerned workmen were not victimised for their so called trade union activities. The workmen had taken no plea either in their explanation to the charge-sheet or in the domestic enquiry or while raising the dispute before the ALC(C), Hazaribagh that they were victimised for their so-called trade union activities. The concerned workmen had never taken any part in the trade union activities. The charges were framed against the concerned workmen on the basis of genuine and correct information received by the management. The management had not implicated the concerned workmen in a criminal case of theft. FIR was lodged before the police and the police had launched prosecution against them. The reference to the criminal case and the result thereto are totally irrelevant so far the domestic enquiry is concerned as the scope and purpose of the criminal trial is entirely different from the domestic enquiry. When the domestic enquiry conducted by the employers is held to be fair and proper no other documents can be looked into the adjudication proceeding before the industrial Court under Section 11A of the I.D. Act. In regard to the allegation that the management failed to produce any seizure memo before the departmental enquiry and that there is no evidence to show that there was shortage of explosive and detonators in the magazine, the concerned workmen did not deny the fact of the explosive and detonators in question being recovered from outside the compound wall of magazine and their removal in an unauthorised manner from the magazine. The management had not appointed one clerk from Ara Colliery and another clerk from Sarubera Colliery for issue of explosive for both the collieries for the three shifts. Under coal Mines Regulation the magazine was under the charge of a competent person and in this respect Shri Hari Narayan Prasad was given the necessary authorisation by the management of Ara Colliery. The explosive issuer of other Collieries are authorised only to collect explosive from Ara Colliery and issued the same at the other collieries. There is no question of the staff of other collieries issuing explosive from the magazine of Ara Colliery. Shr Hari Naravan Prasad magazine incharge of Ara Colliery had the sole and exclusive responsibility for issuing explosive from magazine of Ara Colliery. The magazine at Ara Colliery works only in one shift during the day and the explosive are issued during the day shift for all three shifts. The reference to posting of explosive issue clerks in all three shifts is misconceived. It is false to say that the two clerks and the guards had mutual arrangement for issue of explosive and detonators so as to avoid disruption of production. The guards are not at all concerned with handling of explosive. On the above plea it has been submitted on behalf of the management that the concerned workmen be rejected.

It had been submitted on behalf of the management that as the case related to the dismissal of the workmen after holding enquiry, the point relating to the validity and fairness of the enquiry made be first decided as a preliminary point and accordingly the prayer of the management was allowed and the parties were heard on the validity and fairness of the enquiry as a preliminary point. By the order dated 16-2-85 this Tribunal held the domestic enquiry fair, proper, valid and in accordance with the principles of natural justice and accordingly decided in favour of the management.

Now the two points for consideration is whether the dismissal of the two concerned workmen by the management was justified

It has already been held while deciding preliminary point that the domestic enquiry held by the management was fair, proper, valid and in accordance with the principles of natural justice by the introduction of Section 11A of the Industrial Disputes Act the industrial Tribunal is clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence establishes the misconduct alleged against the employees. The Tribunal, therefore, has to examine the evidence led in the domestic enquiry and may come to a different conclusion but the materials on which it can do so will be confined to the evidence led in the domestic enquiry. The Tribunal is not permitted to take any fresh evidence for reaching such a conclusion.

It has been submitted on behalf of the concerned workmen that in GR case No. 1249 of 80 both of them were acquitted by the order dated 16-7-82 and as such it has been found by the competent Court that they had not committed the theft of explosives and detonators and their dismissal on the basis of the report of the enquiry officer cannot be sustained. It has been held in several decisions as indicated above that the Tribunal has to examine the evidence led in the domestic enquiry and that it cannot take other evidence into consideration. The Tribunal is not permitted to take any fresh evidence while considering the case under Section 11A of the I.D. Act. Moreover, the criminal case was decided on 16-7-82 whereas the enquiry report Ext. M-11 was submitted long before that i.e. on 27-10-80, and the order of dismissal vide Ext. M-13 and M-14 were passed on 3-12-80 and 9-12-80 respectively. The judgement in the criminal case could not have been considered either by the Enquiry Officer or by the authority who punished the concerned workmen. Moreover, it will appear from the judgement in the criminal case that the evidence which were led before the Enquiry Officer were not the same as in the criminal case. The criminal Court had decided the matter on the materials before it but the enquiry officer has passed the order on the materials which were produced before him supporting the charges against the concerned workmen. As the judgement in the criminal case cannot be looked into in the present reference I hold that the objection raised on behalf of the concerned workmen that as they have been acquitted by the criminal court, it must be held that the charges against them had not been proved before the domestic enquiry, cannot be sustained.

On perusal of the evidence before the enquiry officer it will appear that Chedi Mian Civil Guard of Ara Colliery, Bhim Bhagat Security Gurad were witnesses who have supported the case of the management Chedi Mian had his duty on 30-7-80 in No. 13 store Officer and had gone to sign the register which was kept on a Machan near Ara Magazine. He saw a person jumping the compound wall from the magazine side and doubted that he was a thief and so he called Ramakant Pathak who was on duty at that time in the magazine. when Chedi Mian was coming down from the Machan he saw another thief running away from near the magazine and he called Ramakant Pathak. Chedi Mian chased the thief and saw first detonators thrown and further ahead he found a box of explosive. He also found the door of the magazine unlocked and thereafter Ramakant Pathak locked the doors. Bhim Bhagat, Security Gurad had his duty from 8 P.M. of 13-7-80 to 4 A.M. in the magazine. As usual he went to check the lock of the magazine by flashing his torch light and found that the door of the magazine open and unlocked and Ramakant Pathak Security Guard came from inside the magazine. Bhim Bhagat enquired from Shri Ramakant Pathak as to why the door of the magazine was open wherupon Ramakant Pathak told him that he had some work and hence it was open. In the meantime Bhim Bhagat heard a alarm of "Chor 'Chor' being raised by Chedi Mian and on being enquired by him Chedi Mian told him that there has been a theft in the magazine. Bhim Bhagat also found the deatonators at a distance of 50 feet from the magazine and explosive outside the compound wall. Both Bhim Bhagat and Chedi Mian picked up the explosive and the detonators and took it near the gate and thereafter kept it near the electric poll. They have stated that Ramakant Pathak took the torch from Chedi Mian and told he was going to hand over the key to Shri Bhoodeo Banerjee and thereafter

Ramakant Pathak went away and Chedi Mian went to inform the P. O. and other officers and Bhim Bhagat remained near the electric pole where the detonators and explosives were kept. The evidence of these two witnesses show that Ramakant Pathak had opened the magazine and that during that period there was theft of detonators and explosives from Ara Magazine.

In order to appreciate the evidence of Bhim Bhagat and Chedi Mian, I think it would be better to refer to the explanation to the charges given by Ramakant Pathak dated 11-8-80 (Ext. M-2/1). Ramakant Pathak has admitted in Ext. M-2/1 that on 30-7-80 he was on duty in the second shift from 4 P.M. to 12 midnight at Ara Colliery explosive magazine. He has stated that at about 6 P.M. on that day Shri Bhoodeo Banerjee explosive issue clerk of Sarubera Colliery handed over the key of the magazine to him saying that Shri Harinarayan Prasad, Magazine clerk has asked to deliver one box of explosives to the person who will come to magazine later on. He has further stated that about 7.30 P.M. he found three persons coming towards magazine out of whom one was Bhim Bhagat and the other was Chedi Mian who went towards the place where the attendance register was kept for marking the attendance and the third person came to him and told him that Shri Hari Narayan Prasad has sent him for taking delivery of explosives and that as he had been informed earlier by the explosive issue clerk for delivering the materials, he took out the materials from the magazine for delivery and in the meantime hulla was raised that the explosive was being stolen. It is further stated that Ramakant Pathak stopped delivery of the materials and located the door of the magazine and informed the guard that he was going to call Security Inspector and there after went away to the Security Inspector. The other material which is of importance is the statement of Ramakant Pathak before the Enquiry Officer on 25-9-80. He has stated that Bhoodeo Banerjee handed over the key of the magazine and directed him to hand over three hundred detonators and one box of explosive to the person who would come to take its delivery. In this statement he has stated that at about 7.30 P.M. three persons came out of whom one was Chedi Mian, Guard ahead of them and he went towards the magazine and that two other persons came near Ramakant Pathak and asked to deliver the materials as stated by hri Harinaryan Prasad and Bhoodeo Banerjee. Shri Pathak opened the door and showed the place where the detonators and explosive were kept and asked them to take it and in the meantime Chedi Mian raised alarm and thereafter the two persons who had come to take the detonators and explosives fled away. According to him Bhim Bhagat also came there and enquired as to who had opened the door of the magazine whereupon he replied that the door had been opened by him as he had to deliver the materials to the explosive carriers who had fled away. In his further statement in the cross-examination Shri Pathak has stated that it was not the part of his duty to issue explosive from the magazine and he has admitted that he had opened the door of the magazine but has stated that he had not taken out the explosive from the magazine. He has also admitted that it was not his duty to take the key of the magazine with him. From the statement of Ramakant Pathak in his explanation to the charges and his statement made before the E.O, it will appear that the explosives and the detonators had not been taken away from the magazine but it will appear from the statement of Bhim Bhagat and Chedi Mian that one box of explosive and 300 detonators were found outside the magazine which were lifted by them and kept near the electric pole at a distance of about 50 feet from the magazine. Ramakant Pathak had also to admit the above fact in his cross-examination before the Enquiry Officer. He has stated that the detonators and explosives were found outside the compound. He has stated that the detonators were found at a distance of about 20 feet from the boundary wall and that the detonators and explosives were towards the western side of the magazine. He has stated that the gate of the magazine is towards the east. He could not explain as to how the detonators and explosives were found on the Western side of the magazine which had its doors towards Eastern side. It is clear, therefore, that the explosives and detonators were actually removed from the magazine and the earlier statement made by Shri Pathak that the detonators and explosives were not handed over to the carriers is not correct. The two other witnesses B.G. Pandey and K. P. Singh, Security Inspector of Ara Colliery had reached the spot after receiving the information of theft of explosives from the magazine. They had also found the detonators and explosives near the electric pole where Bhim Bhagat was standing. Rama Kant Pathak has admitted that he had handed over the key to Shri Bhoodeo Banerjee and Bhoodeo Banerjee also admitted in his statement that Ramakant Pathak had handed over the key of the magazine in the night. It is clear therefore that the explosives and detonators were removed from Ara Colliery magazine at the instance of Ramakant Pathak and that he had no business either to have the key with him or to open the magazine and deliver explosives to any persons. Admittedly, he was doing all these without any authority.

Shri K. P. Singh, Security Inspector has stated that the original stock register was not in the magazine and as such the exact stock position could not be verified. He has further stated that when he had visited the magazine on the next day he did not find any register in the magazine. Thus it was not possible for the management to verify the stock of explosive and detonators in Ara magazine. Admittedly the detonators and explosives are not freely available in the market and it can be available only on a valid licence. From the statement of Shri Ramakant Pathak himself it will appear that explosives and detonators were stolen from Ara Magazine and as such I do not see there is any serious point regarding the fact whether the stock of the magazine was verified or not.

It has been submitted that no seizure list had been produced. We do not know if any seizure list has been prepared in respect of the explosives and detonators which were found near the pole. As the detonators and the explosives had been removed from the original place where the thieves had thrown it away, even the seizure list would not have shown the exact position from where the detonators and explosives were recovered and kept near the electric pole. In my opinion non-production of the seizure list is of no importance.

Admittedly, Shri Bhoodeo Banerjee was not present at the time when the theft had taken place. The allegation against him is that he took key of the explosive magazine at Ara Colliery from Shri Harinarayan Prasad, Magazine Clerk without any instruction or permission of the competent authority on 30-7-80 and gave the said key of the explosive magazine of Ara Colliery to Shri Ramakant Pathak, Security Guard on duty at Ara Colliery explosive magazine with intention to steal the explosives from Ara Magazine. It is further alleged that due to his connivance there was theft of 25 K.G. of explosives and 300 Nos. of detonators on 30-8-80 from the Ara magazine which were subsequently recovered from outside the magazine. Ext. M 2/2 is the reply of Bhoodeo Banerjee to the chargesheet submitted against him. He has denied to have connived in the theft of explosives from Ara magazine but he has admitted that he had handed over the key of the magazine to Ramakant Pathak, Security Guard which Shri Bhoodeo Banerjee had received earlier from Shri Harinarayan Prasad. Shri Bhoodeo Banerjee gave his statement before the enquiry officer on 25-9-80. He has stated before the Enquiry Officer that Shri Harinarayan Prasad had handed over the key to him and had asked him to hand over the key to Shri Ramakant Pathak to deliver the explosives if any carrier from Ara Colliery comes to take it. He has further stated that he handed over the key to Shri Ramakant Pathak. He has also stated that at about 8.30 P.M. on 30-7-80 Ramakant Pathak came to his residence and handed over the key to him and also informed him that the carriers who had come to take the explosives fled away without taking delivery of the explosives. He has also stated that he was called by the Project Officer and on being asked for the key, he handed over the key to the Project Officer. He has stated that previously Harinarayan Prasad had never handed over the key of the magazine to him. In his cross-examination he has stated that he has no authority to take the key of the magazine from Shri Harinarayan Prasad. He has admitted that he had handed over the key of the magazine to Ramakant Pathak who had also no authority to keep the key of the magazine. One thing is significant which comes from his cross-examination. He has stated that Shri Harinarayan Prasad had told to deliver the explosives

to the carrier who brings the slip but there is no evidence to the effect that the thieves who had come to take delivery of the explosive had any slip with them to take delivery of the explosive. He has also made it clear that Harinarayan Prasad had not kept the explosive and the detonators on the western side of the magazine. It will thus appear from his statement that neither he had any authority to take the key of the magazine nor to hand it over to the guard and his entire caution of taking over the key from Harnarayan Prasad and handing it over to the guard was unauthorised. It will appear from the statement of Shri B. G. Pandey, Senior Overman Ara Colliery that Bhoodeo Banerjee was a clerk of Sarubera Colliery who had no concern with the Ara magazine. He has also stated that the explosive and the detonators for the second and third shifts are received in the colliery during the second shift. It appears, therefore, that the explosives and detonators are issued during the first shift for the use in the second and third shifts of the collieries. In that view of the matter there was no occasion either for Shri Harinarayan Prasad Bhoodeo Banerjee or Ramakant Pathak to open the magazine after the first shift is over for delivery of explosives and detonators for use in the second or third shift. The fact that the explosives and detonators were taken at 8 P.M. during the second shift shows that it was not authorised time to deliver explosives and detonators to the carriers. From all the above facts it appears that there was a conspiracy in which Bhoodeo Banerjee and Ramakant Pathak were involved along with Shri Harinarayan Prasad and that they had contrived method to commit theft of explosives and detonators from Ara Colliery in the night. The hand of Bhoodeo Banerjee is quite apparent as he had taken the key from Shri Harinarayan Prasad and handed it over to Ramakant Pathak who had handed the explosives and detonators to the thieves. In my opinion the Enquiry Officer has rightly come to a conclusion on the evidence before him that Ramakant Pathak had committed the theft of explosives aond detonators from Ara Colliery at 8.00 P.M. on 30-7-80 and that Bhoodeo Banerjee had connived in the commission of the said theft of explosives and detonators by taking the key from Harinarayan Prasad and handing it over to Ramakant Pathak.

The offence of theft of explosives of detonators from Ara Colliery are of very serious nature as it is not only the theft of materials from the magazine but the explosives thus obtained by theft goes in the hands of the criminals who commit anti-social and anti-national crimes leading to loss of property and lives of the innocent persons. If any leniency is shown to the persons who are actually incharge of guarding the magazine, and for the safe upkeep of materials, such offence may increase As such the punishment of dismissal of the concerned workmen in my opinion, is not at all severe.

In view of the discussions made above I hold that the action of the management of Ara Colliery of M/s. CCL in dismissing Shri Ramakant Pathak, Security Guard from their services with effect from 3-12-80 was justified. I further hold that the action of the management of Sarubera Colliery of M/s. CCL in dismissing from their services Shri Bhoodeo Banerjee, Clerk Grade III with effect from 9-12-80 was justified. The concerned workmen are entitled to no relief whatsoever.

This is my Award.

I. N. SINHA, Presiding Officer

[No. L-20012(293)/82-D III.A]

नई दिल्ली, 14 मई, 1985

का. आ. 2245—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. वैस्ट्रन कोलफील्डस लि., चन्द्रापुर (म. प्र.) वारधा वैली एरिया, महाकाली कोलियरी, उप क्षेत्र संख्या 6, वेस्ट्रन कोलफील्ड के प्रबंधतंत्र मे सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर (मध्य प्रदेश) के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 1 मई 1985 को प्राप्त हुआ था।

New Delhi, the 14th May, 1985

S.O. 2245.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur (M.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mahakali Colliery in Sub-Area No. VI of the Wardha Valley Area M/s. Western Coal Field Ltd., Chandrapur (MS) and their workmen, which was received by the Central Government on the 1st May, 1985.

BEFORE JUSTICE SHRI K. K DUBE, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(17)/1984

PARTIES:

Employers in relation to the management of Mahakali Colliery of Messrs Western Coalfields Ltd. Chandrapur (Maharashtra) and their workmen represented through the Lalzenda Coal Mine Mazdoor Union Machinala, Mukti Colony, Chandrapur (Maharashtra)

APPEARANCES

For Union—Shri Shreekrishna Pendre.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal DISTRICT : Chandrapur (M.S.)

AWARD

Dated : April, 25, 1985

The Central Government in exercise of its powers under Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication, vide Notification No. L-22012/105/83-D.III(B) dated 25th February, 1984 :—

"Whether the action of the management of Mahakali Colliery in Sub-Area No. VI of Wardha Valley Area owned by Messrs Western Coalfields Ltd., Post Office and District Chandrapur (MS.) in dismissing Shri Manohar Zade, Electrician, from service with effect from 3-4-1983 is justified? If not, to what relief is the workman concerned entitled?"

2. The concerned workman, Manohar Zade, was working as Electrician in Mahakali Colliery of Messrs Western Coalfields Limited. According to the management on 26-11-1982 while Manohar Zade was on duty as Electrician it was his duty to see that all the electrical switches under him were switched off. He was bound to see this thing personally under the Indian Electricity Rules 1936 and the Mining Regulations. The responsibility to see that none of the switches were kept on was that of Zade and any breach of this duty was a serious misconduct as it entails serious risk to the workman working on the line. According to the management, instead of doing the above duties himself he directed his Assistant to put off switches and thus he committed serious misconduct as it happened. One Abdul Gaffar General Mazdoor was working on the line. He was required to do the guarding work on the telephone line. While doing so, he received an electric shock and fell down sustaining serious injuries. The workman was, therefore, charge-sheeted for negligence of duty and for breach of statutory rules and regulations. In the enquiry that followed Zade was held guilty of misconduct. He was, therefore, dismissed from services. An industrial dispute was raised and in due course the same has been referred under Section 10 of the I.D. Act as stated above.

3. According to the workman three months prior to the incident he was entrusted with the duties of a telephone operator and was doing the work of telephone operator. Since he was not doing the work of electrician it was not his responsibility to put off his switches as alleged. It was further pointed out that Abdul Gaffar on 26-11-1982 was in the gang of the workman, Manohar Zade. Manohar Zade on 26-11-1982 was given two casual workmen and was asked to repair the telephone line. Gaffar along with his two workmen went to the house of Shri Dube, Engineer and Gangadhar Electrical Supervisor where telephone line had to be repaired. In the meantime Abdul Gaffar had started the work of guarding. Since he was to do the work of guarding he had personally gone to put off the switches to ensure his safety. In fact, Abdul Gaffar due to his own negligence fell down from the electric poll but it was not due to electric shock. The charges against him were therefore wholly baseless and false. He had made an application that the Enquiry Officer, the Presenting Officer, the Area Manager, Shri Goel, be examined and that the relevant papers concerning Abdul Gaffar's treatment in the hospital and the discharge certificate, as also the colliery hospital records concerning his treatment may be summoned.

4. Before me it was contended that the enquiry proceedings were vitiated as the Enquiry Officer had also given evidence in the case and he was, therefore, that biased. I decided this issue against the workman holding that Gangadhar has given his evidence at the beginning of the enquiry and thereafter he became the Presiding Officer of the enquiry and therefore no prejudice could be said to be caused to the delinquent workman. I have, however, to see whether on the evidence adduced in the enquiry the charges of misconduct have been proved against Manohar Zade.

5. The management produced Eraiyya Ramiyya Electrician of the Mahakali Colliery and Shri Gangadhar to prove the charges. The workman produced Suresh Kishan Bangre, Baboo Khan, Dilkeshwar Yadav, Bhanudas Kudve and himself in defence. Having narrated the defence and the charges against Manohar Zade I would proceed to examine the two witnesses examined by the Enquiry Officer to see if their statements are sufficient to sustain the charges against Manohar Zade. Eraiyya Rammaiyya stated that Manohar Zade was asked to do the work of telephone as also guarding but he cannot say whether Gaffar and Zade were together given the above duties. He had seen Manohar Zade near the poll after Gaffar had fallen but had not noticed him earlier. It would appear from this statement that Manohar Zade was given the work of telephone. Now the case of Zade that since he has to do the guarding work on the electric lines he had himself put off switches and since Zade had to start the work earlier by himself he had rightly gone to do this part of the duty. This seems to be admitted by this witness. When asked whether Zade and Gaffar were given the duties separately by Gangadhar the witness avoided to answer it, but he admitted that when Manohar Zade was being explained the duty Gaffar was not present along with him. though he would deny that they were differently told the duties of that date. Thereafter this witness admits that after the accident he had gone to see the switches and found that the switches were duly put off. He also admitted that Gaffar had put off the switches and had done the needful. He then admitted that the person who had to work on the line was also entrusted the duty of putting off the switches before starting the work, and since Gaffar was the person entrusted with the duty of working on the line it was his responsibility to put off the switches and to make working safe. The possibility that Gaffar and Zade were told separately for different duties cannot be ruled out according to this witness. This witness though does not support directly but indirectly supports the version of the workman that Zade and Gaffar were given different duties on that date and Zade cannot be said to be responsible for putting off the switches and on the relevant date as he had been told to do the work on the telephone line.

6. The other witnesses viz. Gangadhar who had eventually presided over the enquiry proceedings hts given a long statement and stated that Manohar Zade was given the duty of telephone line guarding and telephone checking and that Gaffar was given as a helper to him. According to him, while Gaffar had been working on the poll for puting off a safety hook he was sitting on an angle iron and at about 11.30 he received a shick therefore he well down. He stated that this was narrated to him by Gaffar. It is surprising that to prove the charges against Zade Gaffar was not examined by the management and this hear say evidence was sought to be sufficient to prove the duties of the two workmen and the manner in which the accident took place. According to the workman Gaffar fell down not because of shock but because of his negligence from the poll and it appears what the workman stated is correct in absence of the evidence of Gaffar. This, however, does end the matter as the charge against Zade that it was his responsibility to put off the switches no matter who was working on the line. It has been brought out in the cross-examination that no detailed report of the accident but been submitted before any superior authority. If the report had been made at that time that would undoubtedly carry the details as to the manner in which the accident took place. But now it is merely the oral assertion of this witness that it is considered to be sufficient to prove the details of the accident. I have already stated that this hear say evidence cannot be accepted in the circumstances of the case to prove that Gaffar fell down as a result of electric shock.

7. In cross-examination this witness admitted that it was also his responsibility to put off the switches. But on that particular date he could not do it because the Engineer was not there and he therefore got busy to do the important work first. Now Zade had been given two responsibilities, telephone repairing and guarding the telephone line. This seems to have also been suggested Gangadhar. Therefore if he had gone to do the work of telephone repairing first it cannot be said that he had asked Gaffar to perform the statutory duty entrusted to him i.e. putting off the switches. Gangadhar admitted that Gaffar had accompanied a different gang. Now if he were to do the electrical work the Senior Electrician of the gang would be required to perform the statutory duty of putting off the switches before starting the work. This appear from the evidence produced in the case. That being so, it cannot be said that Manohar Zade committed any misconduct on 26-11-1982 as alleged. The charges against him are therefore not found to be proved. His dismissal from services is set aside. He would be reinstated forthwith with back wages. He is entitled to Rs. 100 as costs.

K. K. DUBE, Presiding Officer
[No. I-22012/105/83-D.III(B)/D.V(Pt.)]

नई दिल्ली, 15 मई, 1985

का. आ. 2246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स सिंगरानी कोलियरीज कम्पनी लि., गोदावरीखानी के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-85 को प्राप्त हुआ था।

New Delhi, the 15th May, 1985

S.O. 2246.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of th eIndustrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Singareni Collieries Company Ltd., Godavarikhani. and their workmen, which was received by the Central Government on the 8th May, 1985,

BEFORE THE INDUSTRIAL TRIBUNAL : (CENTRAL) AT HYDERABAD

PRESENT :

Sri J. Venugopala Rao, Industrial Tribunal.

Industrial Dispute No. 11 of 1982

BETWEEN

Workmen of Singareni Collieries Company Limited, Godavari Khani, Karimnagar District, (A.P.).

AND

The Management of Singareni Collieries Company Limited, Godavari Khani, Karimnagar District, (A.P.).

APPEARANCES :

Sri G. Bikshapathi, Advocate- for the Workmen.
Sri K. Srinivasa Murthy, Advocate—for the Management.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-21011(14)|81-D.IV(B) dated 20-2-1982 referred the following dispute under Sections 7A and 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Singareni Collieries Company Limited, Godavarikhani, Karimnagar District (A.P.) to this Tribunal for adjudication :

"Whether the management of S.C. Co. Ltd., Godavari Khani is justified in refusing to appoint|confirm the 42 educated workmen (list enclosed) as statement who have been acting as Clerks Grade-II for more than 6 months in various Departments|Sections as Clerks ? If not, to what relief are the workmen entitled ?"

List of workmen enclosed

This reference was registered as Industrial Dispute No. 11 of 1982 and notices were issued to both the parties.

2. Claims statement is filed by the workmen of Singareni Collieries Clerical Association, Ramagundam praying to confirm the concerned employees as Clerks Grade II from the date they were entrusted with clerical duties as contemplated under certified Standing Orders and also to direct the Management to pay the difference in emoluments between the respective daily rated categories of Grade II from the date of entrusted with clerical duties and pass such other further orders as deemed necessary in the circumstances of the case. It is mentioned that the industrial dispute related to 42 workmen who were the members of the Singareni Collieries Clerical Association. It is mentioned that the employees concerned in the dispute were appointed in different daily rated categories on the respective dates as shown in the annexure and that they are educated persons having capability to handle the work and responsibility of clerks. It is also mentioned that the Management entrusted them with the work of Clerk Grade II at surface level in different offices as shown in the annexure. It is pointed out that till 1975 the Management recruited clerks from among the in service candidates as well as outsiders and that they were all either matriculates and non-matriculates. It is also mentioned even otherwise the qualification prescribed for the post of Clerk is only matriculation. It is further clarified that the Management has no recruitment regulation nor qualification prescribed for each post in the Standing Orders. Thus it is the case of the workers that they were no different rules or recruitment policy. While so the Management started recruiting from the year 1975 onwards graduates for the post of clerk and the Management did not issue any notice under Section 9A of the I.D. Act. While changing the service condition with regard to the qualification for the post of Clerk. Thus the management changed the minimum qualification of candidates for the purpose of recruitment of clerks illegally, unjustifiable to suit their convenience and to deprive the chance of confirmation of the employees already working as Clerks in the company. It is submitted that the Management had entrusted the concerned employees in this dispute the work of clerk on surface for the last several years as per particulars given in the annexure. The Management had issued written authorisation to some employees to work as clerks and in some other cases only verbal instructions were issued but all of them working as Clerks continuously. As per the certified Standing Orders the employee who worked three years in a particular category of post shall become permanent. Still all the employees who were working continuously for the last several years ranging from two to six years were not confirmed to the post of the clerk in which they are working. Thus finally the matter is represented by the union to the Management and thereafter conciliation proceedings were started and as no settlement was arrived at the conciliation meeting a failure report was sent to the Government which culminated in the present reference. It is also mentioned that out of 2,025 working as clerks in the Singareni Collieries 1,990 are the members of the Singareni Collieries Clerical Association. Thus the issue is only representative body of clerks working in the Company. It is mentioned that the so called settlement with other union with reference to conditions of service of clerks behind the back of the Clerical Association thereby adversely affecting their interest and the so called Settlement with reference to five employees entered between the Management and the S.C. Workers Union on 20-6-1980 is not done in the interest of these employees.

3. In the counter of the Management, it is denied that all the allegations in the claims statement except those are specifically admitted herein in claims statement. It is mentioned that the allegation that till 1975 in service candidates as well as outsiders were either matriculates or non-matriculates is irrelevant. It is asserted that the Standing Orders of the Respondent Company prescribed terms and conditions of employment in accordance with the Model Standing Orders and the same is certified by the Certifying Officer under the Industrial Employment Standing Orders. The Management prescribed the qualifications for the post of Clerk Grade II and they are as follows :

(a) Must be a graduate from a recognised University.

(i) Should have obtained 50 per cent marks in group subjects for graduates.

(ii) Should have obtained 40 per cent marks in Group subjects in degree level, for a post graduate.

(b) Qualified in Typewriting lower grade (English).

The allegation of the concerned employees are working as Clerks continuously is not correct. The petitioners were appointed to perform the duties of clerk but were appointed and designated as mazdoor to do manual work and they were never appointed as Clerks in the Respondent-Company. Due to exigency of work in the Respondent-Company the petitioners were engaged to do the work of some clerical jobs like Census work, Panchayat election to Local bodies and these work is not part of the regular work of the Company. As the petitioners never appointed as Clerks in the Respondent-Company and hence they cannot take shelter under the Standing Orders to claim permanency in the post of Clerk Grade II. According to the Management four major Unions operating the coal fields of the Respondent-Company raised an industrial dispute with charter of demands and finally a settlement was arrived at before the Regional Commissioner of Labour (Central) on 29-1-1981. The said Settlement is binding on all workmen in this dispute. The Petitioners dispute was also an issue in that settlement. As the Management, had already absorbed Clerk II who possessed the required qualification after observing the formalities as per the Memo of Settlement dated 29-1-1981 which is inforce as per the Industrial Disputes Act, the preference reference for adjudication is bad in law.

4. The point for consideration is whether the reference is maintainable and to what relief ?

5. On behalf of the Workmen four witnesses were examined and Exs. W1 to W15 were marked. On behalf of the Management four witnesses were examined and Exs. M1 to M24 were marked.

6. The sum and substance of the oral evidence adduced before me is to the following effect. W.W. 1 is one T. Suryanarayana who is the Secretary of S.C. Clerical Association, Ramagundam. He deposed that he knew the petitioners 1 to 42 of the reference and all the 42 workmen are working as Clerks. According to him originally some of them were appointed as general mazdoors and remaining were appointed as coal cutters. He mentioned all these workmen were having matriculation posts and two under graduates and they have put in 2 to 6 years service as Clerks before the reference is made. He also mentioned that originally the appointment of clerical grades were made from matriculates and non-matriculates i.e. from those who passed matriculation and failed matriculation. He filed Ext. W1 a Circular 1973 issued by the management in this context. According to him after 1975 the Management started appointing graduates as clerks. It is his case that no notice was issued by the Management under Section 9A of the I.D. Act for changing of qualification for the post of Clerks. He also clarified that out of 42 workmen who are working as Clerks from the time of entrustment of work as such five of them are not pressing their claim as they were appointed in some other posts in the Company. W.W. 1 mentioned that as per the Standing Orders a person working in the post for three months continuously should be continued permanently in that post. Still these workmen are not being paid the salaries as clerks. Ex. W2 is the representation given to Assistant Commissioner of Labour to interfere in this matter. As per Ex. W3 which is the copy of the Settlement dated 20-6-1980, five non-graduate mazdoors were promoted as Clerks; as per Ex. W4, two clerks Grade II who were originally appointed as mazdoors by name Krishnaiah and Somayajulu were promoted as Clerk Grade I. According to him these two are also non-graduates. He marked Ex. W5 to show that one Lateeff was appointed as Clerk Grade II, he being non-graduate. By this he contended that the Company is giving promotion as Clerks to matriculates also. According to him the strength of the members are 2000 and odd and 99 per cent of clerks of the entire Singareni Collieries are members of their Association. He mentioned that the management is also entering into a settlement under Section 12(3) of the I.D. Act but in 1979-80 the Management entered into a settlement with un-recognised union and it had no effect on them.

7. W.W. 2 is one A. Buchi Prasad who is working as Clerk at Godavari Khani. He mentioned that their Singareni Colliery Clerical Association is a registered Trade Union and that he is the General Secretary of the said Union. According to him all the clerical staff of the Singareni Collieries are members of their Union. He marked Ex. W6 the photostat copy of the Settlement between the Management and clerical association. Ex. W7 is the photostat copy of the minutes dated 2-9-1980. Ex. W8 is the photostat of the minutes of discussions held on 27-2-1982. Ex. W9 is the photostat copy of the Settlement dated 22-1-1982 with the Management. He explained that their Union is not a party for the Settlement dated 29-1-1981 between the Management and four other Unions. According to him out of four unions, two are recognised and two are not recognised by the Management. According to him by the date of the settlement the demands raised by their Association for absorption of 42 workmen are pending before the Commissioner of Labour (Central). Ex. W10 is the letter written by them to the Assistant Commissioner of Labour to take up their matter for conciliation. According to them prior to 1975 also matriculation was the minimum qualification prescribed for the post of a clerk and he marked Ex. W11 photostat copy of the promotion policy published by the Coal India. According to him after 1975 also there are instances where matriculates are given clerical posts. According to him Tikaram and C. L. Chauhan were promoted as Fitter Category IV even without qualification from I.T.I. According to him so called settlement dated 29-1-1981 is not being implemented and they demanded that these 42 workmen should be absorbed as clerks Grade with wages from the date of entrustment of clerical duties.

8. W.W. 3 is one E. Venkati who is working as Clerk 8th Incline, Godavari Khani. He worked as Clerk in 1976. He marked Ex. W12 and W13 certificates issued regarding the same and Ex. W14 is the authorisation issued in 1980. According to him though

they were doing the duties of clerk they are not being paid salary of general mazdoors and they thought that they could ask for salaries after regular promotion as clerks. It is his case that they were demanding regular post of clerk and back wages till the date of disposal of Industrial Dispute.

9. W.W. 4 is one K. Sudhakar Reddy who is working as Clerk in Godavari Khani at I Incline. He passed intermediate. According to him he was working as a Clerk since 1977 though he was not given any authorisation in 1979 and in 1980 they were taking the work of clerk from him without any authorisation.

10. On behalf of the Management M.W. 1 is Deputy Personal Manager Sri V. Sobhanadriacharyulu in Singareni Collieries Godavari Khani. He deposed that Grade II clerks the minimum qualifications required is graduation of recognised University with 50 per cent in aggregate group. According to him Typewriter lower grade is also required. For S.Cs. and S.Ts. and mere passing degree and for intermediate candidates the qualification required is degree with 40 per cent aggregate in group and they should acquire Typewriting qualification even two years after selection as otherwise they would be reverted to their original posts. According to him the Employment Exchange represented to them to reduce the aggregate marks to 45 per cent and a Circular was issued as per Ex. M3 by Kothagudem office in that regard. Exs. M4 and M5 are circulars issued by Head Office. According to him persons working in the Mines were also aware of these Circulars and there was strike in 1980 and four unions mentioned their demand and include the dates of the Clerks. He marked Ex. M6 which is a typed notice. According to him the Settlement was arrived at on 29-1-1981 and Clause 11 of the settlement relate to the recruitment of Clerks. He marked Ex. M1 is the Settlement. He conceded that those workmen who had settlement with the management are not members of this Clerical Union. According to him only after becoming permanent clerk of the Company a person can become the member of the Clerical Association and not otherwise. The Clerical Association went to conciliation regarding the demand and they filed Writ Petition which was dismissed. Ex. M7 is Writ Petition and Ex. M8 is counter affidavit and Ex. M9 is the judgment. According to him 27 vacancies in Grade II Clerks category arose and those vacancies were continued as S.C. and S.T. are not available. According to him 37 workmen to the dispute are not graduates, and thus they cannot discharge the duties of graduates. He mentioned that Clerk of Clerical II is a monthly rated employee whereas 37 workmen are daily rated employees. According to him all of them are receiving underground allowance and they never protested and claimed for monthly wages. Of course it is his case that these 37 workers volunteered and opted to work as Clerks. M.W. 2 U. Rama Rao who is Deputy Chief Mining Engineer in Singareni Collieries at Godavari Khani. He is also an Admnistartive Head of the Mine. He deposed that he has to manage, administer, control, direct and supervise the work connected with the production and administration of Mine. According to him his work related to underground as well as surface work. He mentioned that Coal Fillers, Coal Cutters, Trammers, Haulage Khalasis, Supervisors, Tradesmen, Clerks and Officers are various categories of employees connected with the Mine. According to him they recruit the people through Employment Exchange as badli workers in the first instance and interview them and they are called unskilled workers. They are made permanent as coal fillers whenever vacancies arise and they are only piece rated workmen and those who work underground would get underground allowance. Incidentally he mentioned that Coal cutters, Trammers, Tradesmen, Linemen and General Mazdoors are time rated workmen. According to him S. No. 20 of the list V. Rajagopala Reddy is only workman working under him and he is only general mazdoor. His general qualification is H.S.C. passed. According to him S. No. 32 to 44 of the Procedure Manual for Pit Office prescribes the duties and responsibilities. According to him there are three shifts working and two Magazine Clerks who cover all these three shifts. According to him the general shift working from 7.00 a.m. to 12.00 noon and from 2.00 p.m. to 5.00 p.m. According to him the general shift clerk has to check the stocks in the magazines, indent requirements of variety of explosives required and detonators as per the consumption and capacity of the magazines and provides for the same during the day time. He also conceded that they should maintain ledgers and returns required to be sent to the various Government Departments. M.W. 3 is Sri S. W. Tilak who is working as Deputy Chief Mining Engineering, Godavari Khani 2A and 3 Inclines. According to him S. No. 7 to 13 in the reference are working under him. According to him all the 22 Clerks are inter-changeable and graduation is the minimum qualification required for the Clerk post. According to him those 7 workmen under him do not have that qualification M.W. 4 is Sri V. Gopala Shastry is the Deputy Chief Personnel Manager, Singareni Collieries Godavari Khani. According to him out of 40 Clerks concerned in this industrial dispute 2 or 3 are graduates and rest of them are under-graduates i.e. either matriculates or Intermediate. He conceded that they were appointed in the Company in various miscellaneous jobs mostly manual. According to him none of them are appointed as Clerks in this company. He asserted that there was a Settlement dated 29-1-1981 with two recognised Unions and two un-recognised Unions that he negotiated for that Settlement. He identified the Ex. M1 as the said Setlement. In Clause II refers to clerical staff. Finally he said that Grade II clerks are interchangeable and various pay sheets, bonus, ledgers and mentioned that these workers did not have requisite qualifications to be considered for the clerks post.

11. The admitted facts leading to this reference to the Tribunal are as follows :—The reference is made with reference to the refusal to appoint or confirm 42 educated workmen (list enclosed) who have been acting as Clerks Grade II for more than six months in various departments or Sections. At the time of arguments Sri G. Bikshapathi mentioned that the persons referred at S. No. 12 Sri K. Raja Mouli, General Mazdoor, S No. 22 Sri Kami Raimallu, Conveyer Khalasi, S. No. 33 Sri N. Devender Raju, General Mazdoor, S. No 38 Sri K. Vijaya Mohan, Turner Mazdoor and S. No. 39 Sri K. Narayan Reddy, Worker

Trainee expressed their desire not to press their case in the reference and hence the Union is not pressing their case to absorb them as Clerk Grade II. The Management had notice of the same to that extent any orders passed in this reference will not have bearing to those five workmen referred at S. Nos. 12, 22, 33, 38 and 39.

12. Regarding the workmen at S. No. 34 Sri M. Ramreddy, Sri G. Bikshapathi pointed out that he was appointed as a Clerk Grade II from 1-2-1982 while he was discharging duties as Clerk from 16-1-1977 and therefore he should be given the scale of Grade II Clerk from 16-1-1977 till he was appointed as Clerk Grade II i.e. from 1-2-1982.

13. In other words the reference though mentioned 42 employees ultimately comes down with reference to 37 employees including the said M. Ramreddy who is at S. No. 34.

14. It is admitted that these 42 employees were originally appointed as general mazdoors and coal cutters in different daily rated categories in Singareni Collieries Company Ltd., Ramgundam Division as shown to the Annexure to the claims statement. The Singareni Collieries are functioning for over 100 years. The Management conceded that originally non-matriculates were also considered in the earlier stages for holding such posts. But it is the case of the Management that there is no clerical recruitment after 1965 and clerical recruitment started only in 1975 when a decision was taken to recruit graduates and the vacancies notified to the Employment Exchange including the critaria laid down with graduation percentage of marks etc. For the benefit of internal candidates it is the case of the Management Circulars were issued indicating the qualifications required with relaxation with regard to the percentage of marks. The Management did not dispute that these 37 persons who are shown in annexure are educated persons and they are capable to handle the work and responsibilities of clerk. On the other hand the workers let in evidence to show through M.W. 1 to M.W. 4 that the Management entrusted them the work of Clerk Grade II at service level at different offices as shown in the annexure.

15. It is the case of the workers that the Management recruited clerks from among inservice as well as outsiders till 1975 who were all either matriculates or non-matriculates and that the Management also did not prescribe any regulations or qualifications for each post in the Standing Orders and that they were only insisting that the employees should be able to read and write English for the purpose of entrusting the work of clerk. While so it is their case that the management started recruiting from the year 1975 onwards graduates for the said posts of Clerks. While the Management relied on the settlement dated 29-1-1981 and contended that the Tribunal cannot have jurisdiction to cancel or modify the settlement while the said settlement is in force and binding on the parties and that the Tribunal should not act contrary and commit illegalities, the counsel for the workmen contended that the so called settlement dated 19-1-1981 is not binding upon them and it is arrived at with a view to harm the employees namely those who are not parties to the settlement in the garb of four unions and they all do not represent the realities of clerical staff and their demands. It is also contended that the said settlement referred by the Management was not arrived at through the active paricipation of the Clerical association and the said Settlement had no binding effect on the said employees. He maintained that the workers require graduate qualification is only a subsequent stand taken by the Management after 1975 and rew attention of the tribunal that the management in their counter tried to rely upon qualificaiton for the post of Clerk Grade II but they did not file any documents to support the same, and further mentioned that in page 3 of that counter the management admitted that due to exigency of work in the Respondent Company the petitioners were engaged to work on some clerical jobs, and tried to differentiate that the said works done by the petitioners are not part of the regular work of the Company. It is the case of the Petitioners that they worked for more than six months continuously as Clerks as shown in the annexure to the claims petition and the Management counter that they never appointed them as Clerks in the Respondent Company and thus they cannot take shelter under the Standing Orders to claim permanancy in the post of Clerk Grade II was not correct. Thus the question to be seen is whether the petitioners are entitled to confirmation on regular basis as Grade II clerks without referring to educational qualification or not in view of the utilisation of their services as Clerks though they were not appointed as Clerks. The Management did not dispute the factum of the petitioners working and performing the duties by the Petitioners as required by clerks Grade II. It is the case of the management that they were not appointed as Grade II Clerks to claim permanency and thus they are not entitled to confirm on regular basis. The counsel for the Workers on the other contended that they were not party to the Settlement and the settlement which is prejudicial to the service conditions arrived at by the socalled four Unions has no binding effect on them and incidentally mentioned even under Ex. M1 which is the settlement there is nothing about Grade II Clerks or those discharging the said duties and the prescription of qualification and procedure regarding recruitment to the said post cannot be considered for making them permanent in those posts.

16. Before proceeding further on this aspect it is necessary to read the evidence let in on this aspect. W.W. 1 mentioned that these workmen who are performing the duties of clerks since they possess qualification of matriculation or higher qualifications should be absorbed permanently as Clerk Grade II in view of their continuous service as Clerk from the date of entrustment of work. They relied upon the Standing Orders and mentioned that a person who is appointed for unlimited period or who has satisfactorily completed probation of three months continuous service becomes permanent employee as per Standing Orders 2(F)(i). These employees sign in the Muster Rolls as Mazdoors while for Clerical cadre there is Attendance Register. W. W. 1 denied that while implementing the Settlement dt. 29-1-1981 the Management had

already absorbed the persons who had requisite qualifications as Grade II Clerks.

17. The subtle point involved in this case is the Management contended that those who had the prescribed minimum qualification or clerical recruitment i.e. graduation were absorbed in the clerical post. But these persons who are mazdoors though they were entrusted the work of clerks are not entitled to in view of the prescribed qualifications as all of them are admittedly non-graduates. W.W.2 who is the General Secretary of the Clerical Association mentioned that they filed W.P. No. 5888 of 1981 as the same was dismissed and Writ Appeal was disposed of by the High Court and maintained that the Writs filed by them are not directly coming in their way or for the settlement of the dispute. He also mentioned that graduation mentioned as requisite qualification for a person to be promoted as Clerk is not the qualification prescribed. According to him in Clause 11 there is another paragraph referring to non-graduates and therefore they did not raise any dispute settlement dated 29-1-1981. According to him Clause 16 of the Settlement relates to promotion and they did not get benefit because of the said clause. According to him the Management agreed to examine and take appropriate action on the demands of the Union at the earlies and he maintained that the Association was formed in 1979 and the membership is approximately 2,000. He also mentioned that all these 42 persons are members of their Union since 1979. According to him some of the persons like Rami Reddy who is a Graduate and Kanakaiah, Papi Reddy, Rajeshwar Rab, Venkatiah who are working as Clerk were shown as mazdoors in the respective original posts. According to him there are some authorisation for some of these workmen who worked as Clerks under Coal Mines Regulations and W.W.2 is a Graduate and is sponsored by the Employment Exchange. He maintained all these 42 workmen are internal candidates and not from open market and there are four units of Coal India and Clause 11 is promotional policy given by Coal India. W.W.3 is Venkati mentioned that he was working as Clerk since 1976 and without authorisation they are extracting work from him as Clerk. According to him till a week back before deposition he was working as Clerk but at the time of deposition he was on leave. He mentioned that the letter issued to him recently that he should work in the original post as general mazdoor. According to him as a Clerk he was issuing explosives in the Magazine Section of the Section and he was maintaining stock register and stock ledgers and report the position to the Manager. He passed H.S.C. in Second Class. W.W.4 is working as Clerk since 1977 without any authorisation and he is used to fill up the gratuity forms E, From B, Registers and service records. He asserted that he was paid salary of Grade II clerks and he mention that he can speak English and also understand English. His qualification as per the annexure would show that he is Intermediate.

18. The evidence let in by the workers clearly establish that these workers who are in the designation of general mazdoor or surface general mazdoor, or coal filler underground Trammer, Lamp Charger etc., are working since 1974, 1975, 1976 and 1978 as the case may be as shown in the annexure to the claims statement. The Management prescribed the minimum qualification for a clerical recruitment graduates from 1975 but the annexure would show that K. Sudhakar Reddy (15-4-1974), Abdul Muqeeth (6-1-1974), E, John Samuel (28-3-1974), Chandam Ramaiah (15-4-1974), Bobbili Karundas (18-12-1974), were working even earlier to 1975 as they were entrusted with the work of Clerks having qualifications of Intermediate, B.A., S.S.C, as shown in the annexure to the claims statement. The other shown in the annexure were no doubt entrusted with the work as Clerk after 1975 but they were continuously working from the respective dates of entrustment as shown in the annexure and it is also indicated the place of working and their qualification and nature of work as clerks in the office as per columns 6, 7 and 8 of the annexure. These facts mentioned in the Annexure with reference to continuous service after entrustment of work as Clerks and the places of work etc., are not in dispute. But it is mentioned that they did not have requisite qualification i.e. Graduation as made in the Rules of 1975 and thus they are not eligible for confirmation and therefore the Management is not required as a matter of Policy to make them permanent as Clerks. It is the strong plea of the Management unless these people are Graduates they will not be recruited as Clerk Grade II and this part of the Settlement is binding on the workers and it is also contended that this will apply to those who are working as Clerks.

19. Incidentally in the additional written arguments it is contended that the reference is invalid on the ground that there is no industrial dispute as the matter is covered by Settlement and thus this Tribunal is prevented to go behind the Settlement which has statutory force in view of Section 12(3) of the I.D. Act. The factum of taking services and also entrusting them with the duties as Clerk on various dates either earlier to 1975 or even subsequently is not in dispute and the oral evidence let in by W.W.1 to W.W.4 would also show to the same effect that they were entrusted with the work of Clerks and they were in continuous service as such clerk from the time of entrustment till the matter is referred as industrial dispute.

20. Even M.W.1 referred to the Settlement Ex. M1 and it is mentioned that he did not know the procedure of recruitment earlier to 8th December 1975. He admitted that prior to 9-12-1975 there were three grades of Clerks i.e. Grade I, Grade II, Grade III and after 1975 there are three Grades of Clerks and Special Grade Clerk. He could not say what was the educational qualifications required for Grade II and Grade III prior to 1975. It is suggested to him that matriculate qualification was there prior to 1975 and he merely mentioned that he did not know for matriculate qualification for Grade I and Grade II Clerks. M.W.2 mentioned that V. Rajagopal Reddy mentioned at S. No. 20 of the list of workmen attached to the claims statement is only workmen working under him and his qualification was H.S.C. passed and he was allowed to make

trainee as Coal Cutter timber to further his prospects and he was also posted as Mazdoor to Magazine to carry the explosives from the main magazine to the transit house and he admitted whenever regular night shift clerk absented Rajagopala Reddy used to work as Clerk. He was working for a long period and discharging the duties of clerk. He admitted in the cross-examination that the Colliery Manager issued authorisation to Rajagopala Reddy whenever he was working as Clerk to handle the explosives and also admitted Ex. M11 a letter issued by him wherein it was mentioned that Rajagopala Reddy was continued as clerk from 24-10-1978. Finally he conceded that from 24-10-1978 to 16-7-1981 Rajagopala Reddy was entrusted with clerical job for want of clerks. M.W.3 mentioned that there are 22 general clerks working under him and whenever there is shortage they utilise the service of general mazdoor on their routine jobs to Manway office in Magazine. According to him under the Mines Act they have given authorisation for a person to work as clerk in Magazine and Manway. According to him no statutory qualifications are prescribed for those clerks. He admitted that generally these seven clerks in the reference are working in Manway Section. According to him there is no difference in the wages of the clerks working in general office and the manway and mazazine sections and no lesser qualifications are prescribed to work as clerks in Magazine or Manway Sections. He conceded that prior to 1975 the qualification prescribed for clerks are matriculation or under-Graduate and all the clerks are interchangeable. He could not deny whether 7 out of 15 regular clerks are under Graduates and they were discharging their duties as Clerks in Manway and Magazine. According to him these seven clerks in the reference are doing routine nature of work but not special nature of work. He admitted that under Ex. M1 gave the particulars of the grades when they are working as Clerks. M.W.4 mentioned that all the 40 clerks concerned in industrial dispute two or three are Graduates and the rest are under-Graduates, i.e. matriculation or Intermediates and they are appointed in the Company on various miscellaneous jobs mostly manual. According to him Grade II clerks is supposed to carry out number of jobs enumerated in the Schedule. According to him the Clerical Association is also a Craft Union which was formed somewhere in 1979 and there are Craft Unions like Trammers, Tradesmen, Mining Staff, Watchmen, Drivers and there are two Unions called Singareni Collieries Workers Union (AITUC) and the Tandur Coal Mines Labour Union (INTUC) which are recognised by the Management. It is also his case that apart from thse two unions there are no other unrecognised General Union apart from the number of craft unions, and the Clerical Association is also a Craft Union. According to him major recognised union represented all workmen and it is not practicable for the Company to deal with the craftsmen. He maintained that the recognised union raises problem of craftsmen also and All other categories of workmen whenever there is Settlement that they craftsmen derive the said benefit. It is his case that when the Settlement was arrived at on 29-1-1981 by he two recognised and two unrecognised unions that participated and those unions raised demands on behalf of the Clerical Staff also. According to him the question of qualified and unqualified persons temporarily working as Clerks on clerical job was also discussed and a specific clause was arrived at in the Settlement and he draw the attention of the Court of Ex. M1 and Clause 11 which refers to Clerical staff. According to him the issue of absorption of Graduates working on other jobs was also resolved in that Settlement. M.W.2 maintained with regard to non-Graduates on other jobs who were carrying out clearical nature jobs and it was resolved and settled as per Clause 11 of Ex. M1. According to him as the Company had about 2,000 clerks; occasionally it was made to make out stop gap arrangements on account of the temporary work and also on account of S.Cs. and S.Ts. could not be filled up immediately for want of candidates. He admitted that these claimants were employed in Manway and Magazine Sections and Manway is for making musters for those that go underground and Magazine is for issue of explosives. He conceded that Clerks Grade II are interchangeable on various jobs like pay sheet, Bonus, Ledgers etc. Finally he mentioned that these claimants are not having requisite qualification to consider them for the post of Grade II clerks. In cross-examination he mentioned that in Clerical grade there are four grades of clerks i.e. Grade III, Grade II, Grade I and Special Grade Clerks. According to him prior to 1968 matriculation was the minimum qualification for Grade II clerks. According to him in 1975 Graduation qualification were prescribed and there was no recruitment till 1975 for the clerks. M.W.4 admitted under Ex. M13 Circular the Company stated the policy of filling up the posts of clerk by departmental candidates. He conceded that as there was shortage of clerks in Godavari, general mazdoors other categories of workers were being taken for discharging the clerical job if they are matriculate and above. According to him under Ex. W.5 Grade II Clerks who left the service was appointed a fresh. Finally he concedes that the Company can relax any condition and qualification to any one and any outsider also. According to him under Ex. W4 two persons mentioned therein were maistries prior to 1970 and he admitted that they were working as Grade II Clerks from 1970 and they were promoted as Grade I Clerks after completion of 10 years. He attached to them as Manway Clerks and Magazine claimants who work as Clerks discharge the duties attached to them as Manway clerks and Magazine Clerks. According to him they abolished direct recruitments of Grade III clerks and reserve that category for appointment of candidates of deceased employees. According to the unrecognised union of the Craft Union are also recognised under the Trade Union of rade only. He finally mentioned that they resented a particular trade to the extent of their members and thus unions take up issues of their Union of rade only. He finally mentioned that they enter into a settlement with the Craft Union also. According to them they do not maintain membership register for these craft union. But he conceded under Exs. W6 and W9 they entered into two such agreements with craft union. According to him there is no specific demand by the Union for 1981 agreement

for absorption of general mazdoors as Grade II clerks. Witness added the absorption issue of qualified or unqualified workmen working in clerical jobs croped up and it was resolved by Clause 11 of the Settlement. Witness volunteered this. According to him Clause 11 deals with recruitment as well as absorption. According to him it is not possible nor practicable to call the particular Craft Union as well considering the demand of the General Union touching the service conditions of the Craft Union. But he conceded that they entered into a Settlement wih craft union also some times. According to him after 29-1-1981 they entered into several agreements with the Union and Craft Union, for meeting particular situation arising. According to him these subsequent agreements are given by him is deposition in I.D. No. 12|82 and they may be considered. He also mentioned under Ex. W3 non-graduates performing the clerical jobs were taken as Grade III Clerks.

21. Thus the evidence of M.Ws. 1 to 4 would show that these claimants are employed in Manway and Magazine Sections and Manway is for making musters for those who go underground, Magazine is for issue of explosives and Grade II Clerks are interchangeable on various jobs like Pay sheets, Bonus Ledgers etc. It is also elicited from the evidence of M Ws. 1 and 4 that in 1980 there was strike notice issued by four unions making claims or demands and of them two are recognised Unions i.e. Singareni Collieries Workers Union and Tandur Coal Mines Labour Union, and there were two other unrecognised General Unions. It is elicited and found from the evidence of M.W. 4 that there are number of craft union and Clerical Association is also craft union which was formed somewhere in 1979. It is also elicited from the evidence of M.Ws. 1 to 4 that in 1980 there was strike notice issued by four Union making claims or demands and of them two are recognised Unions, S.C. Workers Union and T.C.M.L. Union and there was two other unrecognised general union. It is elicited and found from the evidence of M.W. 4 that there are number of craft unions and Clerical Association is also craft union which was formed some where in 1979. According to him there are several Craft Unions and the Craft Union raised problems of craftsmen also. According to the Management when the strike notice was given under Ex. M6 the Manageemnt and the said Union had settled on 29-1-1981. Ex. M1 deals with the some of the demands of the Clerks also. This is the crucial point which is the main crux of the dispute. Admittedly as conceded by the manageemnt the Clerical Association which is a Craft Union representing about 2,000 clerks was not a party to the Settlement. The evidence of Management as found from the evidence of M.Ws. 1 to 4 would show that the Management was entering into agreements with Craft Unions before 29-1-1981 and subsequently also. It is tried to be mentioned that the absorption of qualified and unqualified workmen working on clerical jobs also cropped up and resolved by Clause 11 of the Settlement and thus the said Settlement touching clerks is also bindin gon the Craft Union, Clerical Association though it was not a party to the Settlement Incidentally it is found that Trade Union take up their own issues or referring to their Trades and the management was entering into Settlement that the Craft Union separately and Exs. W6 and W9 are such agreements. It is found and conceded from Ex. M1 that the Clerical Association which is said to be craft union was not a party to the settlement. But the Management contends that the settlement is arrived at by two recognised general unions and the Clause 11 of the settlement deals with the recruitment as well as absorption of clerks and thus it also resolved. Incidentally matters relating to the Clerks, to the extent as mentioned therein is binding on the craft union or the clerical association. The factum of general mazdoors and other categories of workers being employed for discharging the routine clerical jobs and that the said general mazdoor especially these 37 in number which are the subject-matter of the reference are all either matriculates or undergraduates or some graduates is not in dispute. There was no recruitment of Grade II Clerks till 1975 according to the Management but the management conceded that there were matriculates as the minimum qualification. Clerks Grade II were employed till 1968 and it is also admitted that before 1950 non-matriculates were also considered for Grade II Clerks. So in 1975 new qualification of degrees were tried to set up. The question now is whether these 37 who were admittedly functioning as Clerks with matriculations and under Graduates whether they can be absorbed and whether the benefits of Clause 11 of the settlement comes to them or not. Clause 11 of the Settlement Ex. M1 reads as follows :

> "Recruiment : Graduates in service on other jobs other than those taken on for special training purposes will be given preference on the basis of test reserving 25 per cent of the posts exclusively for such internal candidates. For this purpose internal candidates coming on their own merit will be excluded.
>
> Union will furnish specific cases of all other categories of workers acting as clerks. The candidates having the requisite qualifications and continuously working for over 6 months will be confirmed in their posts subject to satisfactory reports about their work and conduct.
>
> Others, who are continuously acting but not qualified will be considered for other suitable jobs."

But first part of the Clause 11 had no application to these general mazdoors who were functioning as Clerks having been entrusted with the work of Grade II Clerks. The second part of Clause 11 the Union will furnish all other categories of workers acting as clerks. But it is mentioned that the candidates having requisite qualification and continuously working for over six months will be confirmed in their posts subject to the satisfactory report about their work and conduct. This is also not applicable to the present employees who are under the dispute. Since they are not admittedly having requisite qualification which was introduced for the first time in 1975. The last sentence of Clause 11 would read as follows :

"others who are continuously acting but not qualified for consideration for other suitable jobs".

In fact this sentence admits that these persons who are continuously acting but not qualified in view of the introduction of Graduation as minimum qualification in 1975 will be considered for other suitable jobs and not that they will be absorbed as Grade II Clerks in which they were functioning continuously for more than 3 to 4 years or even longer. The employees who are disputing Clause II in this dispute are seriously affected by Clause 11 and they were not consulted and they were not parties. Ex. M1 would show that it is represented by S.C. Workers Union and T.C.M.L. Union which are recognised Unions for general problems and it is also represented by other Union which are unrecognised unions i.e. S.C. Employees Union and A.P. Colliery Mazdoor Sangh. The Managements case is that these general mazdoors are represented by all these workers unions and they are not members of the Clerical Association and therefore the Settlement arrived at, binds them. But the workers W.W.1 to W.W.4 mentioned that this the Clerical Association was not consulted and that they are members of the Clerical Association and therefore Clause 11 which is cutting at their very service conditions is not applicable to them and it is not settlement arrived at by taking them into consultation along with others and therefore the said Settlement is not binding upon them. Now the evidence of workers as well as the Management would show that Ex. M1 wherein the Clause 16 would show that there would be no direct recruitment of Clerks Grade III and Clause 11 mentions that Graduates in service on other jobs other than those taken on for special training purposes will be given preference would not solve the problem of Grade II Clerks who were admittedly in service or those persons who are working and performing the duties of Grade II Clerks since nothing was mention about them. It is found from the evidence of M.W. 1, M.W. 3 and M.W. 4 that there are four types of Clerks i.e. Grade III, Grade II, Grade I and Special Grade Clerks and M.W. 1 and M.W. 4 though admitted that matriculates, undergraduates were doing the duties of Manway and Magazine Sections from Mazdoors for a long time they could not say that there are specific qualification for Grade II. It is admitted by the Management witness that the general clerks can work in Man-way and Magazine Section and they are interchangeable. To say when these are entrusted with the clerical jobs Grade II for more than three to four years and on the ground that that the claimant are not having requisite qualification they could not be considered for the post of Grade II clerks when they are discharging the same duties which are interchangeable as general duty of clerks and when Grade II clerks are on various jobs like pay-sheets, Bonus, Ledgers apart from marking attendance in Man-way and maintaining Magazine for issue of explosives to say that they are not having requisite qualifications seems to be not tenable. In Clause 11 of the Settlement it is only assured that they will be considered for other "suitable jobs" but not to be retained as Grade II Clerks on the ground that they are not graduates. Thus Clause 11 of the Settlement is not a clause that is thrashed out and arrived at by the Workers Union representing the craftsmen of Clerical Association to say it is binding upon them. The general mazdoors discussed the settlement on 29-1-81 under Ex. M1 and the said settlement under Clauses 11 and 16 cannot have any effective settlement of the problems of Grade II clerks or the persons who were discharging the duties of Grade II Clerks having been entrusted with such duties. Their problems are quite different, their service conditions are quite different and their nature of work which are interchangeable with general duty Clerks II as admitted by the Management. Unless it is shown that they are not discharging their duties satisfactorily it cannot be said that their service conditions were also discussed and settled in Ex. M1. In fact though M.W1 mentioned that Grade II clerks are interchangeable from one section to the other, he tried to throw mud on these workers who are entrusted with the duties of Grade II clerks saying that there were complaints from the Department against the work of these workmen to work as Clerks. But no material is placed before the Tribunal to say which officer found any defect in the discharge of the work of which person entrusted with Grade II clerks and if so for what time and for what purpose. You cannot simply say that the department heads gave complaints without producing the same. Finally same M.W1 mentions that these workers themselves volunteered and opted for to work as clerks. This is nothing but adding insult to injury. M.W.1 tried to say that the clerk Grade II are monthly rated employees while 37 workmen are daily rated employees. According to him these persons never asked for acting allowance as clerks and they were receiving underground allowance and never refused from receiving underground allowance. It is admitted that they are mazdoors or tradesmen like Trammer, Coal Cutters etc. They are all educationally minimum matriculates and undergraduates admittedly. The management is using them because of their qualification of matriculation and undergraduate that whenever there are vacancies due to reasons best known to themselves that these mazdoors with their experience are properly qualified to discharge the duties of Grade II clerks and they entrusted such duties also. Having entrusted or having extracted such work from them having not paid them on monthly rated basis or usual allowances for such jobs without asking for when employees worked with fond hope that by continuous discharge of duties ungrudgingly or without any murmur that they would be able to satisfy the good looks of their superiors to have a good chit and get into post of Grade II clerks permanently as and when there are vacancies, to say that these people were receiving underground allowance and that they did not protest and that did not claim for monthly rated salaries seems to be prepostrous and unreasonable stand by the Management. The management cannot say on one hand that they discussed their problems of such people who are entrusted with the duties of Grade II clerks when they had settled with general mazdoors and yet do not solve their problems for absorption as Grade II clerks. Having worked as Grade II clerk if a Grade II clerk is party to the discussion he would not have agreed to be considered

for other "suitable jobs" with eyes open. It is not the case of the Management that so and so worker who is officiating as a Clerk Grade II participated in the discussion and settled and signed the settlement on their behalf. It is conceded that though the Management is entering into settlement with Craft Unions and there were instances under Exs. W6 and W9 where such agreements were entered with craft union and when there is no specific demand by the general unions in 1981 settlement for absorption of these general mazdoors as Grade II Clerks. It is prepostrous to say that under Clause 11 their fate is sealed and settled without they being said parties to the discussions or their craft union being represented in the said discussion.

22. The contention of the management counsel that it is not a matter validly referred as there is no industrial dispute and thus the Tribunal cannot adjudicate upon the same even assuming that the Government had made reference is not sound proposition. The Singareni Collieries Management and workers represented by four unions after the strike notice under Ex.W6 entered into a settlement in the presence of Regional Labour Commissioner (Central) Hyderabad. The settlement covers various aspects of the strike notice. The parties representing the workman as is indicated consist of two recognised unions and two unrecognised unions but as conceded by M.W4 there is no specific demand by these unions in 1981 settlement for absorption of these general mazdoors as Grade II Clerks. It is the point in dispute and this point for which there is a craft union otherwise known as S.C. Clerical Association (as deposed by W.W.1 and these W.W2 to W.W4 are the members of the same Association) was not consulted in the said settlement Ex. M1. So when there are instances of representation and settlements with the Clerical Association and the Craft Union individually as can be seen under Exs. W6 and W9, it is needless to say that the two recognised unions by themselves could have settled their problems under Ex.M1 when they did not directly specify the demands with reference to problems of the persons who were functioning as Clerk II clerks for over a number of years to be absorbed. When they have get their own problems and also a separate Clerical Association of their own of which they are members and when it is admitted that they were not parties to Ex.M1 it is not correct to say that the reference even if made by the Government that that the Tribunal cannot adjudicate. The Ex.M1 which is 1981 settlement did not consider the Mazdoors who are discharging the duties of clerks Grade II for very many years and who are member of clerical union.

23. The second contention raised by the Management it the settlement Ex.M1 dt.29-1-1981 was entered in to under Section 12(3) of the I.D. Act and by virtue of Section 18(3) of the I.D. Act it is binding on the workman they are being employees at the time or appointed later and they are bound by the settlement and thus no industrial dispute regarding the settlement can be looked into and the reference should be terminated as invalid under Section 19(6) of the Act. He relied upon EMPLOYERS OF TUNGABHADRA INDUSTTRIES v. THEIR WORKMAN (1973(II) LLJ, page 383.] It is a case where it is held that when the subject matter of the reference is almost identical with the matters covered by a prior award which has not been properly terminated under Section 19(6) a second reference is invalid. First of all the subject matter of the reference is not identical with the matters covered by the settlement under Ex. M1 dt. 29-1-1981. MW4 who was present on behalf of the Management and negotiated the settlement and was signatory to the same admitted that there is no specific admission by the Union in 1981 agreement for absorption of these general mazdoors as Grade II Clerks. It cannot be said that the subject matter of the reference is identical with the matter covered under the Settlement. In the written additional argument it is mentioned that in Sirsilk Limited v. Government of Andhra Pradesh (no reference is properly given) that the Supreme Court held that even Award is made before its publication the parties can enter into a settlement and that settlement will over ride the award and the Tribunal award will be nullity award. First of all it is nobody case that clerical association entered into a settlement nor it was the definite case of the management that the Unions who signed the settlement represented the case of the mazdoors who are functioning as Clerks Grade II for a long period. So the question of parties entering into Settlement as construed by the Supreme Court and as conceded by the Managements counsel therein is not here and the said citation has no application. The learned counsel for the Management relied upon the decision reported in I.T.C. EMPLOYEES ASSOCIATION v. STATE OF KARNATAKA [1981(I) LLJ, page 431] where a single Judge of the Karnataka High Court held that the settlement arrived at in the course of conciliation proceedings or between the parties can stand by itself and bind the parties as well as other persons as provided for under Section 18(3) of the Act. Now Section 18(3) of the Act it is mentioned that a settlement arrived at in the course of the conciliation proceedings under the Act where there is a recognised union for undertaking or any law for the time being in force or award of the Tribunal which has become enforceable shall be binding on all the paries of the industrial dispute. There is no dispute regarding this. It is the case of the workers that they were never represented and that their grievances were not discussed and there was reference to their demand and the problem of absorption of Grade II Clerks the problem of mazdoors who are functioning as such Clerk Grade II or a number of years was not discussed and settled. Therefore Section 18(3) binds all parties to the industrial dispute or who are parties to the settlement and their heirs successors or assignees. But not those who were never consulted and whose problems were never discussed. Ex.M1 shows various problems of the workers being settled by the general union and the Management after the strike notice was given by them. There is no whisper about these problems of these workers who are functioning as Grade II clerks for number of years and who were fondly hoping to be absorbed as Clerk II in future as it was done previously in the case of their own clleagues who had a minimum qualification of matriculation of HSC, SSC or under-graduates

Infact in ROTAS INDUSTRY LIMITED v. INDUSTRIAL TRIBUNAL (1977 L.I.C page 147 at page 152 it was held that the Tribunal has complete jurisdiction to decide as to whether the settlement arrived at is bonafide as to how far such a settlement would bind the workmen concern. The question of fairness and justness should be examined with reference to the situation as it stood on the date of which it was arrived at. Thus a settlement under Section 18(1) between the parties to the reference or some of them while the reference is pending binds only the signatories and their successors. The Tribunal cannot merely accept the settlement without going into justness fairness L.I.C. v. LIC HIGHER GRADE ASSOCIATION (1973 II LLG, page 288 at 296). So it is for this Tribunal after hearing the parties concern and also looking into the terms of the Settlement to see whether the settlement is fair and in the interest of all concern and once the Tribunal also comes to the conclusion that the settlement is fair and reasonable and that the same binds on other parties also. Then it is a different matter. But it is not so in the instant case.

24. The learned counsel for the Management relied upon the decision reported in RAMNAGAR CANE AND SUGAR COMPANY LIMITED v. JATIN CHAKRAVARTY AND OTHERS (1961 I LLJ, page 244). In that case workmen employed in a public utility concern was represented by two unions submitted charter of demands in respect of the same service conditions, and the conciliation proceedings between of such union and the Management concluded and the Conciliation Officer submitted his failure report. While so the conciliation proceedings in respect of the charter of demands submitted by the other unions were pending and in the said circumstances when an industrial dispute is thus raised and decide either by settlement or by an award the scope of and effect of its operation as prescribed under Section 18 (1) of the I D. Act was discussed. It is held under Section 18(3) of the settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all parties specified in Clauses a, b, c, and d of Section 3 and Section 18(3) d makes it clear. First of all this judgement has no application to the facts of the present case. It is nobodys case that any one of the workers union have taken up the case of these employees who were functioning as Grade II Clerks for number of years while arriving at a Settlement. All the four unions who were parties to the Settlement never came before this Tribunal to say so or that they discussed or tried to raise this problem consisting absorption of these people who were functioning as Grade II Clerks for long years. Admittedly there is a clearical Association and the said Association was not party to the settlement. So it is not a case where two unions submitted charter of demands separately with reference to the same problem and ultimately one of the demands which were part of the conciliation proceedings with reference to one union were referred in the dispute resulting in a settlement so as to bind the other union. It is not such a case. The learned counsel for the Management relied upon Section 12(3) of the I.D. Act and also Clause 11 of the Settlement. The entire problems lies in the last sentence "others who are not continuously acting but not qualified to consider for other suitable jobs". This is a settlement affecting the rights of the parties behind their back without consulting them and without their participation in the discussions. Moreover if it is worded that those who are continuously acting but not qualified will be duly considered for "Grade II clerks jobs" instead of "other suitable jobs" the problem would have resulted in an amicable settlement. It is not so. Thus this problem is not discussed with the affected Mazdoors and on the other hand it is agreed behind their back when tere are 2000 clerks in a recognised Clerks Association of which they are members, by general unions that they will be considered for "suitable jobs". It certainly affects those Mazdoors who are working as Grade II Clerks continuously for long years. Though the said persons were there and they have got representative Association namely Clerical Association having 2,000 clerks admittedly it is not a signatory to the Settlement, and when they are working for continuous period and not qualified subsequent to the amendment of the Standing Orders stating that a graduate is required from 1975, it cannot be said that those who are working continuously should be ignored for absorption as Grade II Clerks when there are no complaints by virtue of this settlement these people will have to go to other suitable jobs and not to be absorbed as clerks II grade. This is in human and so called settlement is against their interests and when they are not parties, it cannot bind them.

25. The next point raised by the Managements counsel that the mere fact that the reference has been made to the Industrial Tribunal did not give jurisdiction to it to cancel or modify the settlement. According to the learned counsel before any one can be appointed he must have minimum qualification of graduation and in the guise of adjudication the Tribunal cannot over ride and cancel the settlement. I am not for a moment saying that this Settlement is bad I am only saying that the Settlement is not applicable to these employees. The learned counsel for the workers contended that the Settlement arrived at binds the union only and not others who were really affected and whose interests were not protected by the said unions. It is his case that the Settlement has no application to them and the question of cancelling or over riding the settlement did not arise. I find that there is some force and reasonableness in the arguments of the Workers Counsel on this aspect and I uphold his contention. The Management is not prevented from following the settlement with reference to the workers who were parties to it and it has binding effect on all those workers who are parties to it. The Tribunal is not questioning the settlement as rightly pointed out for the counsel for the workers but the Tribunal is holding that the settlement is not applicable to the workers who were functioning as Grade II clerks for a long time having the qualification of matriculation and under-graduates with satisfactory service for being absorbed as Grade II Clerks. When the learned counsel for the Management pointed out that there are about 3,000 or 2,000 (whichever may be correct) in the Association and that there are about 87,000 workmen by their own statistics and figures the problem of the Clerks cannot be settled in the guise the problem of 87,000 workmen without consulting them or discussing the problems with the clerks and their representative union. The problem of Mazdoors who function as mazdoors and the problem of clerks who function as Clerk Grade II both general and

those who work in Magazine and Manway which can be interchangeable cannot be clubbed without joining those clerks also for discussion before arriving at a settlement. In other words the so called union who represented at the settlement on 29-1-1981 cannot be considered to have acted properly in a fair and just manner and they cannot be said to have represented the case of these Mazdoors discharging the duties of clerks. The learned counsel for management relied upon the decision of Management of Singareni Collieries Company Limited, Kothagudem Vs. Salim M. Merchant (1972 (I) AWR page 165). It was a case where when a specific dispute was referred for arbitration by the party under Section 10(a), the High Court pointed out that the Arbitrator has no purisdiction to award lesser relief to workers and the general rule which is applicable to Civil Courts cannot be made applicable to case of Arbitrator. In the instant case while considering the justness and fairness of the Settlement as rightly pointed out by me in the light of A.I.I. Employees Association Vs. L.I.C Higher Grade Association (1973 (II) LLJ page 288 and Acts notification and Orders (1977 LIC page 147 I hold that the Tribunal has complete jurisdiction to decide whether the Settlement arrived at is bonafide and as to how far settlement would be binding on the workmen concerned. There is no irregularity or illegality.

26. Now it is contended that these workmen were continued by virtue of the High Court stay even after the said settlement and the Writ Petition and Writ Appeal by the Workmen were dismissed and thus when they are not having minimum qualifications as specified under the Settlement the workmen seeking relief in the Tribunal amounts to acting contrary to the settlement and he same would lead to illegality. It is contended that the Tribunal had no jurisdiction or power to cancel or amend the said settlement. The learned counsel for the workers on the other hand contended that the Writ Petition No. 5888 of 1981 is filed by them as per Ex.M7 with a request not to proceed with filling up of Clerical vacancies in which the concerned clerks are workmen by direct recruitment till the disposal of the Writ Petition and counter was filed as per Ex.M8 and that His Lordship P. A. Chowdary J. disposed of the writ petition stating that he was not satisfied with writ petition allegations that 42 workmen have any right to ask the Management to absorb as Clerks. According to His Lordship the persons have been entrusted with clerical duties but that would not entitle them to ask for their absorption as clerks and thus the Writ Petition was dismissed. When the Writ Appeal was filed by the workmen (Writ Appeal No. 1013|83) Their Lordships of the Division Bench Hon'ble Chief Justice and Justice Sardar Ali Khan, it was held that the finding given by the learned single judge on the averment made in the affidavit filed in support of the Writ Appeal and the counter of the Respondent stand in the way of Industrial Tribunal coming to any other conclusion on the material placed before it as the main dispute has to be decided by the Tribunal after considering the Settlement has been arrived at and whether the present settlement cover how far it is binding on the Petitioners Association and its member who claimed to be not representative of the workmen union which were party. It is held that it is proper to leave that question open to be adjudicated by the Tribunal to enable the Tribunal to adjudicate upon the issue before it, and the findings given in the Writ Petition were thus removed. In other words the Division Bench held that the point in issue should be decided by this Tribunal from various angles with proper perspective. I have already held after careful consideration that the settlement arrived at did not cover the present dispute and it is not binding on the petitioner Association or its members and it is also proper to refer to this Tribunal to be adjudicated upon and that the settlement affecting therights of these petitioners Association and its union members is not fair and just and the same did not consider the absorption of these workers in their posts. When they are continuously working for more than six months and in all cases more than five to six years as could be seen now from the annexure to the claims statement, to say that on the ground they were not qualified they will be given "other suitable jobs" then Grade II Clerks when there are no adverse reports to hold that the work and conduct was not satisfactory seems to be an innovation which is brought to see that all these workers who are discharging the duties satisfactorily should be thrown out to their respective original posts on the ground that all of them did not possess Graduate qualification which condition was not there previously is illegal and the last sentence of Clause 11 has no binding effect on them. When their work is satisfactory and their conduct is satisfactory and when they had minimum qualifications i.e. matriculation and Intermediate which were hither to considered to be sufficient for promotion to Grade II posts and when these persons are continuously acting in the said posts satisfactory to say they will be considered for "other suitable posts" by virtue of the settlement amounts to hitting at them behind their back without considering their representations or without discussing their problems by calling their representatives of the recognised Association. It cannot be brushed aside that 2,000 employees who are clerks and who are interested in such absorption and when a Clerical Association is there representing them and when these persons are members of the said Association when it is admitted by no less than a person who was the negotiator (M.W4) on behalf of the Management that they were not consulted and when he conceded that there is no specific admission by the Union 1981 agreement for absorption of general mazdoor as Grade II Clerks I must hold that the said settlement is not binding on the petitioners association and its members as they are not parties to it. Moreover "other suitable jobs" is so vague and M.W.1 to M.W4 did not say what are the said "other suitable jobs" to which these people are likely to be absorbed. The averment of M.W4 that Clause 11 deals with recruitment as well as absorption as discussed supra is not correct and the Clerical Association demands were pending before the Management as well as Conciliation Officer before the said settlement is arrived at and they cannot brush aside the said Association and its demands on the ground that it is not possible or practicable to call the particular Craft Union as the same was considered in the light of the General Union touching the service conditions of the Craft Union Thus it is not correct to say that Clause 11 touched the problem of absorption with reference to these who are entrusted with

duties of Clerk Grade II job since 1976 and 1977 as shown in annexure to the claims statement.

27. The learned counsel for the Management thereupon contended that the workers should prove on the basis of industry-cum-region how they are entitled for extra payment or revised payment which will result in additional payment as it would involve additional financial liability. The learned counsel relied upon the decision reported in WORKMEN OF BAJRANG JUTE MILLS v. BAJRANG JUTE MILLS (AIR 1970 S. C. page 878). It is true that the capacity of the industry should be gauged on an industry-cum-region basis after taking fair cross section of the industry as laid down therein. Their Lordships were deciding that the Wage Board failed to divide the industry into appropriate classes and the Wage Board which had to follow correctly and apply the principles laid down by Supreme Court in the matter of fixation of wages and D A. did not consider those factors properly. In the instant case the learned counsel for the workers relied upon Ex. W11 and it is also admitted by M.W4 that Coal India and Bharat Cooking Coal Limited prescribed matriculation as a minimum qualification for Grade II Clerks. The learned counsel for the Workmen reljed upon Ex. W11. It is mentioned that for Grade II and Grade III Clerks the minimum qualification prescribed is that one should have passed matriculation ; S.S.C., or equivalent from any Board of Examination. The contention of the Management that they never asked for acting allowance as Clerk and that they were receiving only underground allowance and that they did not protest for receiving underground allowance and that they did not produce evidence seeking daily rate wages when they should have been granted monthly rate wages as any Grade II Clerks. It amounts to begging the question. Infact the Clerical Association made representations on this aspect and Conciliation proceedings were pending. When they are asking for absorption as Grade II Clerks it amounts that they are asking for monthly rate basis as well as claiming for acting allowance whereever it is higher than the underground allowance. Whatever benefits the general Grade II clerks are getting by way of emoluments should be given to these persons who are entrusted with the work of Clerks and the Management cannot extract higher duties of the work from Mazdoors in the cadre of Grade II Clerks which are interchangeable and yet on the ground that workers did not demand proper emoluments refuse to concede that they are entitled to all the emoluments of General Grade II Clerks. Infact the General Grade II clerks and those who are entrusted with the Grade II clerks job in Manway and Magazine Sections are interchangeable M.W1 did not attend the conciliation proceedings and he was not aware of any objection was taken in the conciliation that these workmen are not members of the Clerical Association and the Association cannot represent them. M.W4 who represented in the conciliation proceedings did not say that these workmen are not members of the Clerical Association and that general association represented them. Infact M. W4 conceded that there is no specific demand from the four General Unions in 1981 Settlement for absorption of these general mazdoors as Grade II Clerks and he tried to avoid that the Clerical Association made a demand and the said demand was pending before the Management as well as Conciliation Officer prior to the Settlement. On the other hand the workers union mentioned that their demands were pending and they were not conceded and they were not represented at the time of settlement. Therefore the judgement had no application. The financial capacity of the Management stating that they were not able to meet the expenditure is not whisphered in their evidence. Moreover under Ex. W11 the minimum qualifications are prescribed by the Coal India and Bharat Cooking Coal that minimum qualification is passed matriculation or its equivalent gement had no application.

28. The learned counsel for the Management relied upon the decision reported in SHAMNAGER JUTE FACTORY CO. LTD. v. THEIR WORKMEN (1952 (II) LLJ, page 674) and contended that the Management cannot be dictated by the Workers regarding the number of staff to be employed. Infact it is not the intention of this Tribunal or it is also notthe request of the employees that the strength of the number of the staff to be recruited as Grade II Clerks is to be dictated. Their prospects for promotion and absorption when they are entrusted with the same duties for very many years is the point in issue and not about the strength. When the Management is admittedly utilising their services for want of qualified candidates for whatever reasons as they suggested they cannot say that the number of staff or the strength would be increased while extracting the work from these mazdoors with higher capabilities and duties is there. Therefore there is nothing like fixation of strength. They are already entrusted with such duties and they are only seeking absorption. The direct recruitment of Grade II Clerks is not there. Thus when there is no direct recruitment of Grade II Clerks even under the Settlement, it had no application. The Managements counsel relied upon the decision reported in POONA MAZDOOR SABHA v. DHUTIA (G. K.) AND ANOTHER and in RAMNAGAR CANE AND SUGAR CO. v. JATIN CHAKRAVORTY and in ATLAS CYCLE INDUSTRIES LTD. v. INDUSTRIAL TRIBUNAL, HARYANA [1973(I) LLJ, page 182], and in EMPLOYEES OF THUNGABHADRA INDUSTRIES LTD. v. THEJR WORKMEN AND ANOTHER 1973(II) LLJ. page 283 and in E.I.D. PARRYS v. INDUSTRIAL TRIBUNAL MADRAS (1977 L.I.C. page 783), in INDIAN OXYGEN LTD. v. INDUSTRIAL TRIBUNAL, DELHI 1978(I)LLJ, page 302 and contended that the Settlement is binding and the matter is governed by the settlement and therefore during the currency of the settlement no reference can be made and that the dispute is not maintainable. Infact some of these decisions are already discussed and none of these decisions would show that when the said party who are really affected constituting maior block of the Clerical Association were not parties to the settlement and when their rights are being settled adverse to their interest to say that the general union settled on their behalf and put these Clerical Association members at disadvantage is not fair and just for the Management. Nothing prevented the Management from taking the Clerical Association

representative also into confidence while arriving at the said Settlement Ex. M1 especially when their demands were also pending before the Management when they arrived at such Settlement. After careful consideration of all these citations I am of the opinion that none of these citations relied upon by the management would come to their help to say that this settlement arrived at with the General Union will bind the Clerical Association or its members with reference to their demands and rights and duties. It is also worth noting that Clause 11 of the Settlement adversely affects them and the existing position where they were allowed and entrusted with the work as Clerk Grade II jobs and when they were also functioning for more than five to six years and when the problem of absorption is pending indirectly the Management tried to get over with reference to 42 employees affecting their amoluments, promotions, and also their prospects or furthering their future with better emoluments without consulting them,

29. The jobs entrusted to these persons namely booking musters of Manway, issue of explosives at the Magazine is tried to be as good as semi-clerical in nature as well as the workmen are actually doing the job of clerks and these clerical jobs are interchangeable within general clerk Grade II. Infact the decision to recruit Clerical staff in 1975 taken by the Management and that they should henceforth recruit graduates whenever vacancies are notified would really affect these persons who are entrusted with job of Clerk Grade II and who normally are entitled for absorption as Grade II Clerks. Certainly it is a genuine grivenace and Ex. W11 with reference to the similar Coal fields like Cal. India and Bharat Cooking Coal would clarify that the minimum qualification required for Grade II Clerks is only matriculation. If so how the Management by amending that they require only graduates with certain percentage of marks get over their real problem of absorption. They cannot in-directly hit who are qualified by experience and also on the basis of record that they were satisfactorily discharging duties as Grade II Clerks by getting raw graduates to those posts to the detriment of these workers who are functioning as such with experience.

30. The counsel for the workers Sri G. Bikshapathi contended that no notification was issued for changing the requisite qualification as required under Section 9(A) of the I.D. Act. The Managements counsel contended that it is not necessary to give any notice and that the settlement entered into will apply to them. The learned counsel for the Management contended that even now there are number of non-graduates and non-matriculates who are recruited as far as back that itself will not be a ground for non-matriculates or matriculates and further mentioned that the Standing Orders did not prescribe any such stipuations. It is not the case of the workmen for a moment that in future non-matriculates or matriculates should be recruited for Grade II clerks. It is the case of the Clerical Association as well as its Members that those mazdoors who are already entrusted with the job of Grade II Clerks having their minimum qualifications of matriculation as prescribed in other Coal industry and which these workers also possess have to be taken into consideration for absorption of the said persons. It is not the case of the workers that in future Graduate should not be recruited. If their service conditions are not altered by absorption and if those persons who have put in service for a long period for more than six months are absorbed by slow process the entire workmen who are functioning in the said cadre will be absorbed in the normal course by stages and in future they can think of recruiting graduates as mentioned in Clause 11 of the Settlement for which they are not parties. The Settlement to the extent it affects the workers who are matriculates and under-graduates who have put in service as Grade II Clerks is bad and not applicable to them as they were not consulted and as they were not made parties to the Settlement.

31. It is not a simple case of entrustment of some clerical jobs for short periods with breaks as argued by Management counsel is a case where these people were entrusted with Grade II Clerical jobs which are interchangeable with general clerical jobs and it is not correct to say that they cannot acquire rights of confirmaion or permanency on the said basis. Infact the Managements contention is that there are no standing Orders prescribed qualifications, If so it is not understandable how those are functioning as Grade II clerks continuously for a period of five to six years are not entitled for absorption. The Management cannot think that they intended to absorb them elsewhere without specifying that they are going to absorb as Grade II clerks elsewhere. The Writ Appeal in W.A. No. 1013|83 on dt. 7-11-1983 kept open the issues and the Tribunal is directed to settle those issues having removed the obstacles that may arise in the light of the judgement of single judge in Writ Petition No. 5888|81. The Managements counsel argued that grievance made on the individual issues of the union will not go to establish any credance for recognition of the said unions as they are only bargaining for themselves and not for the entire class of workers. The provisions of the I.D. Act or Trade Union Act are such that the conciliation machinery entertains a dispute raised by any registered Trade Union irrespective of their strength. Morever Exs. W6 and W9 would show that the management was entertaining agreements with Craft Unions before and after.

32. According to the learned counsel for the Management as per the settlement recruitment of Grade II Clerks have been stopped and it was intended that semi clerical jobs are reserved for rehabilitation of cases were matriculation and above are available. It is the case of the Management that it was specifically agreed in settlement that non-graduates will be absorbed on other suitable jobs and they mentioned that the five workmen i.e., S. Nos. 12, 22, 33, 38, and 39 whose cases was not taken for consideration were employed as Grade III Clerks thereby saying that these 37 also will be considered for suitable jobs as and when vacancies arise. First of all this is belated stand. Secondly when the workers are admittedly functioning as Grade II Clerks discharging certain specified duties and when Grade II clerks are interchangeable with general Grade II clerk to say that they will be absorbed as Grade III clerks or in suitable job is belittling the grade and as well as workers. When they are functioning as Grade II Clerks, they should

be absorbed as Clerk Grade II only and the Standing Orders and rules do not come in their way when settlement has no binding on them. Therefore the Union has justified that they had real dispute and fair dispute and the same is bona fide one.

33. The workmen filed number of exhibits to show that the workmen in question were carrying on clerical jobs for a long time and they were paid underground allowance. It is argued by the Management that in some of the cases the concerned persons were drawing more than the pay of Clerks, and inclusive of Underground allowance, the workmen were drawing almost equal to Grade III clerks while some of them are drawing much more than Grade II clerks If such specified instances are there where these workmen are drawing more than Grade II Clerks while absorbing them as Grade II clerks their individual salaries will be protected and they should not be any difficulty for the same. Thus on a careful consideration I hold that the Settlement dated 29-1-1981 under Ex. M1 did not provide specific relief to these workmen in dispute and the said Settlement is not binding on all the workmen.

34. Thus on a careful consideration I hold that the reference is proper and the Management of Singareni Collieries Company Limited, Godavari Khani is not justified in refusing to appoint and confirm the 37 educated workmen as per the list who have been acting as Clerk II for more than six months in various sections as Clerks The workmen are entitled for full emoluments as Grade II Clerks from the time of their appointment as Grade II Clerks from the original date of functioning from which date they are continuously working as Grade II clerks with all the benefits and increments, bonus and all facilities as and other Grade II clerks general in the said scales. If any of these individuals who are under the reference are getting more pay than Grade II clerks the same will be protected while absorbing them as Grade II Clerks.

Award is passed accordingly.

Dictated to the Stenographer, transcribed by him corrected by me and given under my hand and the seal of this Tribunal, this the 22nd day of April, 1985.

Sd/- Illegible,

Indusrtial Tribunal

APPENDIX OF EVIDENCE

Witnesses Examined For the Workmen :	Witnesses Examined For the Management :
1	2
W.W 1 T Suryanarayan	M W 1 Y Sobhanadhacharyulu
W.W. 2 A Buchi Prasad	M W 2 U. Rama Rao
W.W 3 E. Venkati	M.W. 3 S W. Tilak
W.W 4 K Sudhakar Reddy	M W 4 V Gopala Sastry

Documents marked for the Workmen

Ex W1	True Copy of the Circular No. 4/3136/4340, dt 20-12-73 issued by the General Manager, S.C.Co Ltd., Kothagudem to all pits and departments of Kothagudem & Yellandu Collieries with regard to Departmental candidates for promotion to clerical posts.
Ex W2	True copy of the petition dt 29-7-1981 filed by T Suryanarayan, Secretary, Singareni Collieries Clerical Association, Ramagundam Branch, before the Assistant Labour Commissioner(C), Hyderabad
Ex. W3	True copy of the Settlement arrived at under Section 12(3) of the I D Act, between the Managemen of Singareni Collieries Company Limited and Singareni Collieries Workers Union on 20-6-80, at Godavarikhani over promotion of Grade II Clerks in C S P
Ex. W4	Office Order No PRG/6E/780 dt 26-4-81 issued by the Management to Ch Krishnaiah and S.S. Somavajulu
Ex W5	True Copy of the appointment order No PRG/5E 1502 dt 18-7-81 issued by the General Manager, Godavarikhani to S A Tathif Ex-Clerk.
Ex. W6	Photostat copy of the Memorandum of Settlement arrived at under Section 12(3) of the I.D. Act, between the Management of Singareni Collieries Co. Ltd., Godavari Khani and the Singareni Collieries Clerical Association on 17-4-1980 at Godavari Khani.
Ex. W7	Photostat copy of the Minutes of discussions held on 2-9-1980 at D P.Os Office, Ramakrishnapur in connection with the S.C Clerical Association, with regard to certain problems faced by the payment clerks of Ramakrishnapur Division I & II
Ex W8	Photostat copy of the Minutes of discussion held on 27-2-82 in the dispute between the Management of M/s. S.C. Co. Ltd and their workmen represented by Singareni Collieries Clerical Association, over a charter of 26 demands and relay hunger strike with effect from 1-1-82
Ex. W9	Photostat copy of the Memorandum of Settlement under Section 12(3) of the I.D. Act, 1947 in the I D between the Management of M/s. S.C. Company Limited Godavarikhani and their workmen represented by Singareni Collieries Clerical Association, Godavarikhani over a charter of 32 domands.
Ex. W10	True copy of the representation dt. 26-5-81 made by A. Ramulu, Secretary, Singareni Collieries Clerical Association to the Asst Labour Commissioner (C) Hyderguda, Hyderabad with regard to confirmation of educated Mazdoors as clerks Grade II who are continuously working as Clerks for more than 6 months and above.
Ex. W11	Photostat copy of the promotion policy for Ministerial cadre in Bharat Coking Coal Limited.
Ex. W12	Photostat copy of the Certificate dt. 16-4-82 issued by the Superintendent, Mining Engineer GDK No. 8 & 8A inclines to Esampalli Venkati, General Mazdoor with regard to his attendance and conduct.
Ex. W13	Photostat copy of the Certificate dt 31-12-80 issued by the Management to Esampalli Venkati, General Mazdoor with regard to his attendance and conduct
Ex. W14	Form of Appointment or Authorisation of competent persons under Coal Mines Regulations, 1957 Mines Act, 1952.

1	2
Ex. W15 By consent	Photostat copy of the Joint Bipartite Committee for the Coal Industry Coal India Limited Calcutta dt. 17-7-84.
	Documents marked for the Management :
Ex. M1	True copy of the Memorandum of Settlement arrived at under Section 12(3) of the I.D. Act between the Management of S.C. Co. Ltd., and their workmen represented by (1) Singareni Collieries Workers' Union (2) Tandur Coal Mines Labour Union, (3) Singareni Collieries Employees Union and (4) A.P. Colliery Mazdoor Sangh on 29-1-81 at Hyderabad.
Ex. M2	True Copy of the Officer Order No. PRG/6F/2464, dt 13-12-81 issued by the Additional General Manager, Godavarikhani to M. Ram Reddy, D. Anjaiah, G. Surya Prakasha Rao and L Rajeshwara Rao appointing them as clerks.
Ex. M3	True copy of the letter No. P4/3208/1586, dt. 17-7-82 issued by the Managemen with regard to Clerical recruitment.
Ex. M4	Photostat copy of the Circular No. P4/3208/5971, dt. 9-12-75 issued by the General Manager, Singareni Collieries Company Limited, Kothagudem to all Pits and Departments of Collieries with regard to recruitment of clerks.
Ex. M5	True copy of the employment Notice No. PRG2G/2627 dt. 9-12-80 issued by the General Manager Godavari Khani to all pits and departments of Ramagundam Collieries with regard to recruitment of clerks.
Ex. M6	True copy of the Strike Notice dt. 4-12-1980 issued by the Tandur Coa Mines Labour Union (INTUC) and I.N.M.W.F. to the Management.
Ex. M7	True copy of the W.P. No 5888/81 filed by the Singareni Collieries Clerical Aszociation before the High Count of judicature of Andhra Pradesh
Ex. M8	True copy of the counter affidivit in W.P. No 5881/81 filed by the Management before the High Court of judicature of A.P., Hyderabad.
Ex. M9	True copy of the judgement in W.P. No. 5888/81, dt. 2-11-1983 delivered by High Court of Andhra Pradesh, Hyderabad.
Ex. M10	Procedure Manual for pit office, of Singaren Collieries Company Limited.
Ex. M11	True Copy of the letter No. GDK 7/02-P/81/3660, dt. 16-7-81 addressed by SME GDK No. 7 Incline the S.C. Co. Ltd., Ramagundam Division III to DS RG. III with regard to confirmation of certain Mazdoors as clerks.
Ex. M12	True copy of the letter No. GDK 3/06-A 81/1978, dt. 11-7-81 addressed by SME GDK No. 3 Incline the Singareni Collieries Company Limited to D.S.R.G. I with regard to confirmation of certain Mazdoors as clerks.
Ex. M13	True Copy of the letter No. P4/3136/4340 dt. 20-12-73 addressed by the General Manager, Singareni Collieries Company Limited, Kothagudem Collieries to All Pits, Departments, Kothagudem Collieries and Yellandu Collieries with regard to Departmental candidates or promotion to clerical posts.
Ex. M14 (By consent)	True copy o the letter No. GDK/8/20/6/1521 dt. 19-7-81 addressed by S.M.E. GDK 8 and 8A Incline to D.S.R.G. III with regard to engaging two General Mazdoors.
Ex. M15 (By consent)	True copy of the Service particulars of B. Karunadas furnished by the Management.
Ex. M16 (By consent)	True copy of the Service particulars of Ch. Kishan Rao furnished by the Management.
Ex. M17 (By consent)	True copy of the Service particulars of Ch. Ramesh Rao, furnished by the Management.
Ex. M18 (By consent)	True copy of the letter No. GDK 8/20/L/161-dt. 29-1-80 addressed by Colliery Manager GDK No. 8 Incline to G.S.R.G-III with regard to requirement of Clerks at GDK No. 8 Incline.
Ex. M19 (By consent)	True Copy of the letter No. GDK 8/20-C/1717, dt. 18-10-80 addressed by S.M.E. GDK 8 and 8A Incline to D.S. RG-III with regard to requirement of clerical staff.
Ex. M20 (By consent)	True copy of the letter No. GDK 8/20/C/549 dt. 11-4-81 addressed by P. Madana Mohan Rao, GDK No. 8 and 8A Incline to D.S.R.G.III with regard to sanction of clerks.
Ex. M21 (By consent)	True copy of the office Order No. GDK 1/16-J/80/1071 dt. 25-5-80 issued by the Management of GDK. No. 1 Incline to Clerical Staff of GDK No. 1 Incline.
Ex. M22 (By consent)	True copy of the letter No. GDK 9A/81/25/3480 dt. 11-9-81 addressed by Colliery Manager GDK No. 9A Incline to D.S.R.C. III with regard to information about acting clerks.
Ex. M23 (By consent)	True copy of the Office Order No. GDK 1/16-J/80/466 dt. 8-3-80 issued by the Colliery Manager GDK No. 1 Incline, to Clerical Staff of GDK No. 1 Incline with regard to change of work.
Ex. M24 (By consent)	True copy of the letter No. GDK 8/06-A/880, dt. 14-7-81 addressed by the Colliery Manager GDK No. 8 incline to GSRG. III with regard to confirmation of certain Mazdoors as clerks.

[No. L-21011(14)/81-D. IV (B)]
J. VENUGOPALA RAO, Industrial Tribunal

नई दिल्ली, 15 मई, 1985

का. आ. 2247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सिंगरेनी कोलियरीज कंपनी लिमिटेड, कोथागुडम के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-85 को प्राप्त हुआ था।

New Delhi, the 15th May, 1985

S.O. 2247.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of

the Industrial Tribunal, Hyderabad, as in the Annexure in the industrial dispute between the employers in relation to the management of M|s. Singareni Collieries Company Ltd., Kothagudem, and their workmen, which was received by the Central Government on the 8th May, 1985.

BEFORE THE INDUSTRIAL TRIBUNAL (CENTRAL) AT HYDERABAD

PRESENT :

Sri J. Venugopala Rao, Industrial Tribunal.

Industrial Dispute No. 10 of 1982

BETWEEN

The Workmen of Singareni Collieries Company Limited, Kothagudem, Khammam District.

AND

The Management of Singareni Collieries Company Limited, Kothagudem, Khammam District.

APPEARANCES:

Sri D.S.R. Varma, Advocate—for the Workmen.

Sri K. Srinivasa Murthy, Advocate—for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-21012(10)|81-D. IV(B) dated 20-2-82 referred the following dispute under Sections 7A and 10(1) (d) of the Industrial Disputes Act, 1947 between the employers in relation to the Management of Singareni Collieries Company Limited, and their workmen to this Tribunal for adjudication:

"Whether the management of Singareni Collieries Company Limited, Kothagudem are justified in giving Grade F to Shri D. Joseph, Head Peon while implementing the recommendations of the Central Wage Board for Coal Mining Industry instead of placing him in the corresponding scale as against Rs. 43-364-EB-3-82 ?

If not, to what relief is Shri D. Joseph entitled by way of revision of scales of pay?"

This reference was registered as Industrial Dispute No. 10 of 1982 and notices were issued to both the parties.

2. This is a claim statement field by one D. Joseph to refi the wages and the corresponding scale of Rs. 43-3-82 of Wage Board award from 15-8-1967 and refix the wages from time to time according to the Wage Board reviston that took place in the later periods. It is mentioned that he was appointed in March 1942 in the Head Office as Chokra and served in the company for the last 40 years. He was promoted to Grade of Rs. 43-3-64-EB-3-82 from August 1967 on starting basic salary of Rs. 46 00 per month treating him as Head Peon when the post of Head Peon which was formerly called as Jamedar in Head Office, fell vacant. His predecessors Abdul Nabi, and K. Govindu were called Jamedars and were given the grade of Rs. 43-3-82 and retired from service. The said customary practice of giving this grade in the case of D. Joseph was also followed. But when the Board Award for Coal Mining Industry subsequently N.C.W.A.I and N.C.W.A.II have taken place and given effect to the Management has deliberately attempted to lower his grade and fixed his wages in the lower 43-3-64-EB-3-82 corresponding wage board grades 180-5-230-7-273 with effect from 15-8-1967. Corresponding N.C.W.A.I with effect from 1-1-1975 is Rs. 330-12-450 and N.C.W.A.II with effect from 1-1-1979 is Rs. 460-16-652. It is further mentioned from the Wage Board Report in Chapter VIII that in its Award it clearly recommended that it is hoped that in the interest of the later all round relations between the workers and managements their recommendations for adjustment into new scales will be liberally interpreted at Unit level so that dissatisfaction among all employees is totally eliminated. It is pointed out that in the light of the said observation D. Josph who was given 43-3-82 Grade in August 1967 when Wages Revisions are effected three times n 15-8-67, on 1-1-1975, and on 1-1-1979, the corresponding fixation in the revised scale was eliminated in this case. Infact the Wage Board recommended that all the existing higher and lower rate of wages allowances & emoluments and other service conditions, facilities and amenities which are more favourable than those recommended by them shall be protected. The Management action would indicate that they deliberately lowered the scale and fixed the revised basic scale in lower scales. Under the fitment formula under the revised grades, the fitment should be made in the corresponding revised scale but the Management totally ignored this direction.

3. On the other hand the Management filed a counter stating that Shri D. Joseph who was designated as Head Peon was placed in Rs. 43-3-64-EB-3-82 before the Wage Board recommendations was correctly placed in Grade 'F' i.e. Rs. 165-230 at the time of implementation of the Wage Board recommendations. It is pointed out that categorisation of Head Peons at page 172 against the summary of Recommendations of Wage Board should be linked under the heading Watch and Ward Staff. It is pointed out that Mazumdhar Award of 1956 did not apply to the scales of Peon or Head Peons. The All India Appellate Industrial Tribunal fixed the scale at Rs. 26-1|2-30-1-40 for Peons and the said scale was modified by the Das-Gupta Awar.l to Rs. 28-1|2-39-1-40. These Awards have not prescribed any specific scale of Head Peons and Jamedars. The Company however designated 3 or 4 Peons as Head Peons and given them the scale of Rs. 43-82. For the first time the Wage Board prescribed Grade 'F' i.e. scale of Rs. 165-230 for the Head Peon and Jamedars. Shri D. Joseph who was designated as Peon was properly placed in the Grade of Rs. 165-230. On the implementation of the Wage Board Recommendations with effect from 15-8-1967. After the Wage Board the Unions in Singareni Collieries demanded higher grades for workers including Head Peons in I.D. No. 30 of 1967. The I.D. No. 30 of 1967 was resolved by Arbitration Award otherwise known as Raghunath Reddy's Award. This Award was a compromise in full and final settlement of dispute and this Tribunal passed an award in terms of the Arbitration Award. Infact the demand raised in respect of Head Office Peon was not pressed by the Unions as indicated in the Reghunath Reddy's Award. Thus it is not now open to the Head Peon to claims higher grade as Head Office against the Award which is binding & which is in force. No valid dispute expited and the reference is bad in law. The instances quoted haev no relevance to the claim of the workman

concerned. The workmen claimed that Grade 'E' i.e., 180 273 is corresponding grade 43-82. The Wage Board has specifically allotted Grade 'F' i.e. 165-230 for Head Peons and Shri Joseph was accordingly placed in Grade F. Consequent on the implementation of N.C.W.A.I and II he was placed corresponding pay scale in Grade F. Infact the Management adopted Cadre scheme for Peons and those Peons who had put in more than 15 years service were placed in Grade G and above 25 years in Grade F. When some of those people who were brought in this grade when Joseph who was already in Grade F made a representation to remove the said anamoly, he was placed by placing him to the level of others. Thus there is no justification whatsoever to create special grade for this incumbent.

4. For the said worker he himself examined as W.W.1 and marked Exs. W1. For the Management M.W.1 is examined and Exs. M1 to M3 were marked.

5. According to W.W.1 he was working as Head Peon from 1967 and in 1967 his scale was Rs. 43-82. As per the Wage Board recommendations which came into effect from 15-8-1967, he should be placed in the revised scale of Rs. 180-265 and the same was not done. Thus the said mistake was carried forward into N.C.W.A-I and II. It is his case that he should be placed in Category III and the same was not done. It is his case that his scale should have been protected as per the Wage Board recommendations and subsequent agreements. According to him he is retained in Grade F while he should have got Grade III. He conceded that Raghunath Reddy Award he had no benefits.

6 On the other hand M.W.1 mentioned that he is the Personnel Officer of the Singareni Collieries Company Limited in the beginning the workman was in the grade of Rs. 28-1-45. After the Wage Board recommendations he was put up in Grade H in corresponding scale of Rs. 140-163. According to him Mazumdhar Award did not recommend scales for Peons. The Labour Appellate Tribunal recommended Rs. 26-40 for Peons and it was modified by Das Gupta Award and the subsequently the Management voluntarily created the post of Peons and in the Wage Board recommendations the Head Peons were allotted Grade F for the first time. The Management witness contended that Shri D. Joseph was fixed at the said rate. He filed Ex. M1 as Wage Board Recommendations. According to him both Govind and Abdul Nabi were seniors to him and by the time the Wage Board recommendations came to be implemented Govind was promoted as Junior Inspector and when those two Peons were working as Head Peons Joseph was only a Peon. According to him the Head Peon post was created to maintain the docorum of the top executives and the dignatories so that he should conduct himself with dignity. The witness mentioned about I.D. No. 30 of 1967 and marked Raghunath Reddy's Award as Ex. M2. According to him the grades fixed by the Management were proper and Joseph was transferred to another Section about 10 years back as top executive did not like his behaviour and yet he was continued as Head Peon. In the cross examination he mentioned that prior to the implementation Joseph was in the scale of Rs. 43-82 and he was given Grade F as per the recommendations of the Wage Board and Rs. 43-82 was the grade recommended for Grade III Clerks as per the Wage Board recommendations. As per the Wage Board recommendations of 1967 all those who were in the scale of Rs. 43-82 was given scale of Rs. 180-265. Witness added that only Clerks in the former scale was given to the later scale. He conceded that under Chapter XVIII of the pare 10 of the Wage Board recommendations the existing favourable scales were protected wherever applicable. According to him the Head Peon was shown under the heading Watch and Ward Staff in this page.

7. Admitted facts are that Shri D. Joseph was in the post of Head Peon since First August, 1967 in the singareni Collieries Company Limited, Kothagudem. It is found now that he retired on 1-10-84. The matter was referred in this Tribunal in 1982. The Wage Board recommendations of 1967 came into force from 15-8-1967. Actually the said D. Joseph was fixed up in the grade of Rs. 40-3-64-3-82 by the Collieries as per the office order dt. 5-8-1967. After he was issued the said office order the Wage Board recommendations came into force from 15-8-1967. So within 10 days after the fixation of the office order as Head Peon in the scale of Rs. 40-3-64-3-82 the Wage Board Gradation of A, B, C, D, E and F were implemented and he was put in 'F' Grade. At page 172 of the Wage Board recommendations volume 1967 the Peons and Head Peons were categorised in the Watch and Ward Staff. The Peons were fixed in Grade of Rs. 140-3-170-4-178 and the Head Peons were fixed in the grade of Rs. 165-230. Thought he was given 'F' Grade which is the higher grade in Peons, the Counsel for the workmen contended that he should have been fixed in the scale of Rs. 180-265 instead of fixing him at Rs. 165-230. According to the learned counsel for the workmen when he had already been as Peon in the grade of Rs. 40-3-82 while refixing his salary instead of fixing the next higher scale of Rs. 180-265. This is the crux of the problem. The Management contended that till the Wage Board recommendations of 1967 there is no Head Peon designation and there is no corresponding scales as sought to be argued. Miss G. Sudha for the Management contended that the recommendations of the Wage Board were accepted by all without questioning and the cushoning of 'F' grade after considering all aspects and pointed out that the wage structure evolved and the categorisation proposed should also be applied to the Collieries of Andhra Pradesh and after considering the statement of parties they were of view that the time has come to bring the job nomenclature and job description and categorisation that existed in Singareni Collieries in line with what they were recommending for Bengal and Bihar. It is also mentioned that they were conscious of the fact that categorisation proposed for the Collieries was somewhat different to that adopted in Collieries in Bengal and Bihar and the Collieries in the former State of Hyderabad was some what different to that adopted for Collieries in Bengal and Bihar; still they wanted the job nomenclature and job description and categorisation. The Head Peons and Peons are fixed in F and H Grades at page 172 of the Wage Board recommendations respectively. While the Peon H Grade is fixed at Rs. 140-3-170-4-178 the Head Peon is fixed in F Grade and his scale is Rs. 165-4-205-5-230. The fixation

by the Wage Board which came into force on 15-8-1967 is only after the Union has raised it as an anamoly and the matters were discussed thread-bare. Evidently the workman is asking for minimum scale Grade E at Rs. 180-265 which is equal to Clerical Grade III. But the entire Wage Board recommendations as seen at Chapter XIX as well as Chapter IX will not give any such scope for such interpretation as requested by the worker. Ofcourse in the reference itself it is pointed out that whether the Management is justified in giving F Grade to Joseph while implementing the Wage Board recommendations for Coal Mining Industry instead of placing him in the corresponding scale of Rs. 40-3-64-3-82. Shri D.S.R. Varma for the workmen contended that the reference would indicate that placing if D. Joseph in corresponding scale is the subject matter of dispute and he should have been naturally fixed at higher grade by protecting his scale. According to him gradation is not important and he mentioned that as per para 40 of the Wage Board recommendations the Head Peon will be placed in scale equivalent to Grade F but if he is already in higher scale it would continue as personal to the incumbent. Thus when he was already Head Peon it would continue as personal to the incumbent and therefore he should have been put in the next higher scale equivalent to Grade II in the scale of Rs. 180-265. This Ex. W1 is record note of the group held in Hyderabad and is an agreement subsequent to the Wage Board recommendations and it is dated 18-6-1974. According to him the pay actually drawn is the criteria and not the grade. On the other hand Miss Sudha contended that before the Wage Board recommendations there is scale of Rs. 40-3-64-3-82 and the Mazumdhar Award 1956 which was existing before the Wage Board recommendations 1967 came into existence did not prescribe any scale or category to Peons and that All India Industrial fixed the Peons scale at Rs. 26-1|2-30-1-40 and Das Gupta Award 1959 fixed Peons at Rs. 28-1|2-30-1-40. Thus there is no distinction between Peon and Head Peon and stressed that the Collieries fixed only three Peons at 40-3-64-3-82 and within 10 days after the said fixation when the Wage Board recommendations gave grades, the persons were given F Grade as required and their scales were also fixed as per the Wage Board recommendations. So there is nothing like the Head Peon should be given higher grade in the given circumstances. The Peon who is drawing Rs. 28.00 as fixed at Rs. 40-3-82 without any cadre and people who are Head Peon are not described anywhere. So as per the Wage Board agreement F Grade is given, it is argued that the salary is correctly fixed. Subsequently N.C.W.A-I came in the force from 1-1-1974 with Rs. 310-9-400: N.C.W.A-II came in to force from 1-1-1979 with scale of Rs. 440-12-584 and N.C.W.A-III came into force from 1-1-1983 at Rs. 605-18-857 with reference to Head Peons. So on a careful consideration I find that the fixation of 'F' Grade and also giving scale as fixed by Wage Board is proper and the record notes of minutes of the group as per Ex. W1 that his salary should have been given higher grade of Grade III is not justified. The classification placing him in the corresponding scale as per the Wage Board recommendations is proper and just.

8. The cases of Abdul Nabi and K. Govind had no application to the facts of the case. K. Govind is the Jamedar of Watch and Ward Staff and he was promoted to Security Department before the Wage Board recommendations. Abdul Nabi died before 15-8-1967. Moreover the Wage Board recommendations were accepted by all. Whenever there are doubts about the differences in the Grades, scales designations. The Union made representations and on a careful consideration I find that the positioning structure given to D. Joseph with the scale of Rs. 165-4-205-5-230 having regarding to the corresponding scale which he was drawing at the scale of Rs. 43-3-64-EB-3-82 is proper and correct Hence he is not entitled for any relief.

Award passed accordingly.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 23rd day of April, 1985.

Sd/-

Industrial Tribunal

Appendix of Evidence

Witnesses examined for the Workmen	Witnesses Examined for the Management
W.W1 D. Joseph	M.W1 P Satyanarayana

Documents marked for the Workmen

Ex. W1 (By consent)	Photostat copy of the Record notes of meeting of the Group held at Hyderabad on 18-6-1974

Documents marked for the Management

Ex. M1	Extract of Wage Board recommendations.
Ex. M2	Extract of Award relating to peons.
Ex. M3 (By consent)	Letter dt. 12-7-79 addressed by the General Manager, S C. Co. Ltd, Kothagudem to D/ C.A. (C&P) with regard to Special increment to D Joseph.

J. VENUGOPALA RAO, Industrial Tribunal

[No. L-21012(10)/81—D. IV(B)]

नई दिल्ली, 17 मई, 1985

का.आ. 2248—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रावनवारा खास कोलियरी मैसर्स वैस्टर्न कोलफील्डस लिमिटेड पन्च परिया डाक पारेसिया जिला छिन्दवाड़ा (म. प्र.) के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण न 2 बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.5.85 को प्राप्त हुआ था।

New Delhi, the 17th May, 1985

S.O. 2248.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Bombay, as shown in the Annexure, in the industrial dispute between the

employers in relation to the management of Rawanwara Khas Colliery of M|s. Western Coalfields Limited, Pench Area, P.O. Parasia, District Chhindwara (M.P.) and their workmen, which was received by the Central Government on the 8th May, 1985.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO 2 BOMBAY (CAMP AT JABALPUR)

Case No. CGIT-2(5) of 1985 (Bombay)

Case No. CGIT|LC(R)(46)|1985 (Jabalpur)

PARTIES :

Employers in relation to the management of Rawanwara Khas Colliery of Messrs Western Coalfields Limited, Pench Area, Post Office Parasia, Distt. Chhindwara (M.P.) and their workmen represented through Shri Sunder Singh Chouhan S|o. Shri Ram Prasad Chouhan, Post Office, Parasia, Distt. Chhindwara (M.P.).

APPEARANCES :

For Workman.—Shri R. K. Gupta, Advocate.

For Management.—Shri P. S. Nair, Advocate.

INDUSTRY : Coal DISTRICT : Chhindwara (M.P.)

AWARD

Dated : 21-3-1985

By their Order No. L-22012(9)|82-D.IV(B) dated 9th July, 1982 [transferred vide Order No. S-11025(1)|85-D.IV(B) dated 8th February, 1985] the following dispute has been referred by the Central Government for adjudication :—

"Whether the action of the management of Rawanwara Khas Colliery of Messrs Western Coalfields Limited Pench Area, Post Office Parasia, District Chhindwara (M.P.) in retiring Shri Sunder Singh Chouhan, S|o. Shri Ramprasad Chouhan with effect from 16-7-1980 was justified ? If not, to what relief the workman is entitled ?"

2. The contention of the Union who has espoused the cause briefly stated is that the retirement of the workman concerned from 16-7-1980 is wrongful, firstly on the ground that M|s. Karamchand Thaper & Co. in whose colliery formerly the workman was working had no age of retirement in their Certified Standing Orders and therefore the workman in their employment continued to work till they were physically sound. It is further stated when by virtue of the Nationalisation Act the management of the colliery merged with the Coal India Ltd. the service conditions of all the employees in the service of former employer stood unaffected and therefore there could not be any age of retirement for the employees fixed. It is then stated that in the Model Standing Orders by which the industry is governed also do not have any provision for retiring age and therefore the retirement alleged to be at the age of 60 years is illegal and amounts to retrenchment in violation of the Sec. 25 of the Industrial Disputes Act. The Union further contends that the real birth date of the workman was not 16th July 1920 as appearing in the record of the management but was 3rd October 1922 as seen from the School Leaving Certificate and though the management was moved by the application dated 26-4-1980 no heed was paid to the representation and therefore the retirement even before the completion of 60 years is invalid. In their statements of claim there are other contentions also but not urged at the time of arguments and therefore need not be referred.

3. The claim is opposed by the management, firstly on the ground that the workman concerned being in a supervisory capacity drawing more than Rs. 500 per month cannot be termed as a 'workman' and therefore no cognisence can be taken of the dispute. Secondly it is asserted that the date of birth of the workman as shown in the record i.e. 16h July 1920 is a correct date and therefore the retirement was on attaining of 60 years of age. Lastly it is urged that for the industry the superannuation age has been fixed as 58 years which was also a recommendation by the Wage Board and retirement therefore at the age of 60 years in pursuance of the Circular issued by the Manager can never be impugned.

4. By the respective rejoinder the same contentions are reiterated and therefore need no special reference.

5. On the pleadings following issues arise for determination and my findings are as under :—

ISSUE	FINDINGS
1. (a) Whether the employee concerned is a workman under the Industrial Disputes Act ?	Yes
(b) Is he performing supervisory duties and drawing wages more than Rs. 500 p.m. ?	No
2. Does the workman prove that his real birth date is 3-10-1922 ?	
3. Is there any contract of employment between the parties whereby the workman was to retire at the age of 60 years ?	Yes
4. Is the workman entitled to continue till he is hale and hearty ?	No
5. Does the severance of relationship between the parties amounts to retirement on superannuation or does it amount to retrenchment under Sec. 2(oo) of the Industrial Disputes Act ?	Amounts to retirement on superannuation

6. If it amounts to retrenchment has the management followed the procedure as laid down in Sec. 25 of the I.D. Act. If not, to what relief or relieves is he entitled ? Does not arise.

7. Whether the action of the management in retiring the workman at the age of 60 years is justified ? Yes

Reasons :

6. The workman has been defined in Section 2(s) of the Industrial Disputes Act where it means a person employed to do any skilled or unskilled, manual, supervisory, technical or clerical work, but does not include a person in supervisory capacity drawing wages exceding Rs. 500 which limit has now been increased to Rs. 1600. But since the dispute was raised when the previous limit was subsisting we shall go by the same. Naturally the main question would be whether the workman was performing supervisory duties and for the said purpose the evidence of the workman and the witnesses cited by the management will have to be perused. Sunder Singh in his deposition says that he was performing mechanical duties in the colliery and was never supervising the work of any other workman, but only taking the help of labourers in the course of discharge of his duties. Against this, there is a statement of Ram Niwas Sharma who says that the workman was working as an Asstt. Mechanical Foreman. Nevertheless from his own admission it is evidence that the workman along with the other employees like machinists etc. was working in Mechanical Section and taking instructions from the executive Engineer. In view of the denial of the workman and at the same time from what the Executive Engineer has stated, it can never be gathered that the workman concerned was a supervisor or performing duties supervisory in nature, but as record indicates was himself working as a technical hand. There is, therefore, no substance in this contention.

7. The plea of the Workman is that his real birth date is 3-10-1922 and not 16th July 1920 and therefore he could have continued at least till 3-10-1982 rendering the retirement on 16th of July 1980 invalid. For the said purpose he is relying upon the School Leaving Certificate, and the record of the school where the birth date is stated to be 3-10-1922 and has cited Uma Shanker Singh serving as a teacher in the Government Pench Valley Higher Secondary School Parasia. The evidence of the witness, however, is of no use in the sense that he has no personal knowledge in the matter. What therefore remains is the entry in the school record against which the management has brought on record the declaration made by Sunder Singh for the purpose of Coal Mines Provident Fund on 11th of May 1951 when he must have joined the said fund, signed by the workman and attested by the Manager where he has stated his birth date as 16th of July 1920. In between the school record and the declarations signed by the workman himself, the admission made long back in the year 1951 would carry greater value. In this connection attention was drawn to letter dated 23-6-1980 (Annexure F) by the Assistant Commissioner, Coal Mines, Provident Fund where he has expressed doubt about the authenticity of his record on the ground that occasionally it was found tempered. The Form A in the case of Sunder Singh, however, has no over-writing etc., and therefore there is no need to doubt the authenticity particularly when workman has admitted to have signed these documents. There was no reason for the workman to state an incorrect date on the date of joining the fundice and hence I cannot believe the school record but shall accept the workman's own declaration.

8. This then brings us to the last question namely what is the date of retirement or what is the date of superannuation. The argument on behalf of the workman is that since there was no date of retirement fixed the retirement even on attaining the age of 60 years would never be a retirement on reaching the age of superannuation and so still would be a retrenchment, for effecting which provisions of Sec. 25F must be complied with. , Under Sect 2(00) retirement on attaining the of age of superannuation is excluded from the definition of retrenchment. Therefore was the retirement on attaining the superannuation or not will be the crucial question. Now it is strenuously urged that when the previous employer had not fixed any age of superannuation and when the Standing Orders which lay down the conditions of service between the workman and the mines also do not speak of any such age, the workman has a right to continue till he is in a position to work and termination before that date would amount to retrenchment. In reply to this the management says that the term 'superannuation' and also the term 'retirement' have been defined in the Act known as Payment of Gratuity Act, in Section 2(q) and(r) where retirement means termination of service of an employee otherwise than on superannuation, while superannuation means (i) the attainment by the employee of such age as is fixed in the conditions of service as the age on the attainment of which the employee shall vacate the employment and (ii) in any other case, the attainment by the employee of the age of fifty-eight years. Relying on a case reported in 1977 LIC p 336 (Kashinath Sahoo Vs. Orissa State Electricity Board), it was urged that when no age was fixed and when the workman was to work till he was physically sound, the case would be governed by Sec 2(r) (i) of the Gratuity Act. Against this in Fibre Foam Private Ltd. Vs. K. Kannan Nair and others (1979 LIC p. 252) it was held that when the contract of employment does not specify the age of superannuation, the attainment of age of 58 years by the employee would amount to superannuation, meaning thereby that the case would be governed by Sec. 2 (r) (ii). In this regard when we read the provision of Section 2(r)(i) the emphasis is on the fixation of age as the age on attainment of which the workman has to vacate the employment and if there is no such fixation Clause 2(r)(ii) fixes it as 58 Saying that the workman is entitled to work till he is physically sound does not fix the age on attainment of which the workman is to vacate, but

it speaks of an event. In my view therefore in the light of the wording of Sec 2 (r) (i) it is evident that not the said clause but the clause (ii) which would govern the facts of the present case and when viewed accordingly the retirement on attaining the age of 60 years amounts to retirement on superannuation, the management by the Circular dated 24th of April 1984 having increased the age from 58 years to 60 years as the age of retirement. In my view, therefore, in the light of the provisions already referred to the retirement is perfectly justified. Even in K. G. Mathew Vs. Chairman-cum-Managing Director, National Insurance Co. Ltd. and others (1976-I-LLJ 27) it is held that when a contract of employment does not provide age limit for retirement the usage prevailing in the similar establishment can be taken as a part of contract of service. It was further held that it is impossible to construe the contract of service as one for life and the normal practice in such services would be taken to be part of service contract. In the instant case, the Gratuity Act has laid down the two definitions and Sec. 14 thereof says that the provisions of the said Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactments other than the Act or any instrument or contract. Concluding therefore, it is held that the contention of the workman that he has a right to continue to work till he was physically sound or that his retirement on 16th July 1980 was a premature retirement and therefore amounted to retrenchment can never be accepted. Award accordingly.

M. A. DESHPANDE, Presiding Officer.

[No. L-22012(9)|82-D.IV(B)]

[No. S-11025(1)|85-D.IV(B)]

A. V. S. SARMA, Desk Officer.

नई दिल्ली, 15 मई, 1985

का०आ० 2249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 33ग की उप-धारा (2) के अधीन दायर किया गया आवेदनपत्र, जिसका उल्लेख इससे उपाबद्ध अनुसूची में किया गया है, श्रम मंत्रालय की अधिसूचना संख्या का०आ० 1973, तारीख 26 मई, 1977 में विनिर्दिष्ट, केन्द्रीय सरकार श्रम न्यायालय, नई दिल्ली के समक्ष लंबित पड़ा है ;

और सरकार के ध्यान में यह बात लाई गई है कि उपर्युक्त आवेदन पत्र केन्द्रीय सरकार श्रम न्यायालय, कानपुर के क्षेत्राधिकार के अन्दर उत्तर प्रदेश के राज्य से संबंधित है । श्रम न्यायालय का गठन श्रम और पुनर्वास मंत्रालय (श्रम विभाग) की अधिसूचनाओं संख्या का०आ० 2029 तारीख 6 जून, 1984 और का०आ० 2212, तारीख 26 जून, 1984 द्वारा किया गया था;

अतः, अब औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 33-ख की उप-धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त श्रम न्यायालय, नई दिल्ली से उक्त आवेदनपत्र के संबंध में कार्यवाहियों को वापस लेती है और उसे उक्त श्रम न्यायालय, कानपुर को अंतरित करती है और उक्त श्रम न्यायालय, कानपुर उन कार्यवाहियों पर उसी प्रक्रम से कार्यवाही करेगा, जिस पर वह उसे स्थानांतरित की गई है और विधि के अनुसार उनका निपटान करेगा।

अनुसूची

केन्द्रीय सरकार श्रम न्यायालय, नई दिल्ली के पास लंबित पड़े उस मामले की सूची, जिसे केन्द्रीय सरकार श्रम न्यायालय, कानपुर को स्थानांतरित किया जाना है :

क्रमांक	श्रम न्यायालय, आवेदनपत्र संख्या	मामला
1	एल०सी०ए० 42/84	वरिष्ठ सिविल इंजीनियर (सी), एस०एस० बी०एल० उत्तरी रेलवे, सहारनपुर के माध्यम से मदन लाल सारद बनाम उत्तरी रेलवे ।

[सं० एस०-11020/3/85-डी-I(ए)]

New Delhi, the 15th May, 1985

S.O. 2249.—Whereas the application filed under sub-section (2) of section 33C of the Industrial Disputes Act 1947 (14 of 1947) mentioned in Schedule hereto annexed, is pending before the Central Government Labour Court, New Delhi, specified in the notification of the Ministry of Labour No. S.O. 1973 dated the 26th May, 1977;

And whereas, it has been brought to the notice of the Government that the above application relates to the State of Uttar Pradesh within the jurisdiction of Central Government Labour Court, Kanpur constituted, vide notifications of the Ministry of Labour and Rehabilitation (Department of Labour) No. S.O. 2029 dated the 6th June 1984 and S.O. No. 2212 dated the 26th June 1984;

Now therefore, in exercise of powers conferred by sub-section (1) of section 33-B of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby withdraws the proceedings in relation to the said application from the said Labour Court, New Delhi and transfers the same to the said Labour Court, Kanpur and the said Labour Court, Kanpur shall proceed with the proceedings from the stage at which they are transferred to it and dispose the same in accordance with the law.

SCHEDULE

List of case pending with the Central Government Labour Court, New Delhi to be transferred to the Central Government Labour Court, Kanpur.

Serial No.	Labour Court Application No.	Case
1	LCA No. 42/84	Madan Lal Sarad Vs. G.M. Northern Railway through the Senior Civil Engineer (C), S.S.B.L. Northern Railway, Saharanpur.

[No. S-11020|3|85-D.I(A)]

नई दिल्ली, 8 मई, 1985

का०आ० 2250.— केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 2 के खंड (ठ) के उपखण्ड (vi) के उपबन्धों के अनुसरण में भारत सरकार के श्रम और पुनर्वास मंत्रालय

श्रम विभाग की अधिसूचना संख्या का०आ० 4596 दिनांक 6 दिसम्बर, 1984 द्वारा सिक्यूरिटी पेपर मिल्स, होशंगाबाद का उक्त अधिनियम के प्रयोजनों के लिये 18 दिसम्बर, 1984 से छः मास की कालावधि के लिये लोक उपयोगी सेवा घोषित किया था । और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिये बढ़ाया जाना अपेक्षित है,

अतः, अब, औद्योगिक विवाद अधिनियम , 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उपखण्ड (iv) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिये 18 जून 1985 से छः मास की और कालावधि के लिये लोक उपयोगी सेवा घोषित करती है ।

[फा०सं० एस-11017/10/81-डी-I(ए)]

New Delhi, the 8th May, 1985

S.O. 2250.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour and Rehabilitation, Department of Labour S.O. No. 4596 dated the 6th December, 1984 the Security Paper Mill, Hoshangabad, to be a public utility service for the purposes of the said Act, for a period of six months, from the 18th December, 1984;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act, for a further period of six months from the 18th June, 1985.

[F. No. S-11017/10/81-D.I(A)]

नई दिल्ली 13 मई, 1985

का०आ० 2251.—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उपखण्ड (vi) के उपबन्धों के अनुसरण में भारत सरकार के श्रम और पुनर्वास मंत्रालय, श्रम विभाग की अधिसूचना, संख्या का०आ० 4208 दिनांक 20 नवम्बर, 1984 द्वारा किसी भी खनिज तेल (कच्चा तेल) मोटर और विमानन स्पिरिट, डीजल तेल, मिट्टी का तेल, ईंधन तेल, विविध हाइड्रोजन तेल और उनके मिश्रण, जिनमें सिन्थेटिक ईंधन, स्नेहक तेल और इसी प्रकार के तेल शामिल हैं, के निर्माण या उत्पादन में लगे उद्योग में सेवाओं को उक्त अधिनियम के प्रयोजनों के लिये 20 नवम्बर, 1984 से छः मास की कालावधि के लिये लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिये बढ़ाया जाना अपेक्षित है,

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ) के उपखण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिये 20 मई, 1985 से छः मास की और कालावधि के लिये लोक उपयोगी सेवा घोषित करती है ।

[संख्या एस-11017/2/84-I-डी(ए)]

आ०ह०सु० अय्यर, अवर सचिव

New Delhi, the 13th May, 1985

S.O. 2251.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947) declared by the notification of the Government of India in the Ministry of Labour and Rehabilitation, Department of Labour S.O. No. 4208 dated the 20th November, 1984 the industry engaged in the manufacture or production of mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil diverse hydrocarbon oils and their blends including synthetic fuels lubricating oils and the like, to be a public utility service for the purposes of the said Act, for a perod of six months, from the 20th November, 1984;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declared the said industry to be a public utility service for the purposes of the said Act, for a further period of six months from the 20th May, 1985.

[No. S-11017/2/84-D.I(A)]

S.H.S. IYER, Under Secy.

नई दिल्ली, 15 मई, 1985

का. आ. 2252.—केन्द्रीय सरकार न्यूनतम मजदूरी अधिनियम, 1948 (1948 का 11) की धारा 26 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश करती है कि इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से पांच वर्ष की अवधि तक उक्त अधिनियम की धारा 13 और 14, जिनका संबंध काम के घंटों और अतिकाल से है, रेल विभाग द्वारा स्थायी रेल मार्गों के निर्माण या उनके रख-रखाव के लिये दैनिक मजदूरी पर नियोजित नैमित्तिक श्रमिकों को इस शर्त के अधीन रहते हुए लागू नहीं होगी कि वे कर्मचारी, जिन्हें छूट दी गई है, रेल सेवक (नियोजन के घंटे) नियम, 1961 के उपबंधों से शासित हों।

[संख्या एस-32014/2/84- डब्ल्यू. सी. (एम. डब्ल्यू)]

पी० राघवन, उप सचिव

New Delhi, the 15th May, 1985

S.O. 2252.—In exercise of powers conferred by sub-section (2) of section 26 of the Minimum Wages Act 1948 (11 of 1948), the Central Government hereby directs that for a period of 5 years from the date of the publication of this notification, in the Official Gazette, the provisions of sections 13 and 14 of the said Act relating to hours of work and overtime shall not apply to the daily rated Casual Labour employed departmentally by the Railways on the construction or maintenance of permanent way of the Railways subject to the condition that the exempted employees are governed by the provisions of the Railway Servants (Hours of Employment) Rules, 1961.

[No. S. 32014/2/84-WC(MW)]

P. RAGHAVAN, Dy. Secy.

नई दिल्ली, 7 मई, 1985

का.आ. 2253.—केन्द्रीय सरकार, कर्मचारी भविष्य निधि स्कीम, 1952 के पैरा 4 के उप पैरा (1) के अनुसरण में भारत के राजपत्र भाग 2 खंड 3, उप खंड (ii) तारीख 2 जुलाई, 1983 में प्रकाशित भारत सरकार के श्रम और पुनर्वास मंत्रालय (श्रम विभाग) की अधिसूचना

संख्या का.आ. 2770, तारीख 9 जून, 1983 में निम्नलिखित संशोधन करती है, अर्थात :–

उक्त अधिसूचना में–––

(i) क्रम सं. 6 के सामने की प्रविष्टि के स्थान पर, निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात –
"श्री वी वी गुलाटी,
प्रबंध भागीदार,
इस्पात और इस्पात फैब्रिकेशन, प्लाट सं 29,
सैक्टर-24, फरीदाबाद ।"

(ii) क्रम सं. 9 के सामने की प्रविष्टि के स्थान पर, निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात :–
"श्री इन्द्रसेन बंसल,
अध्यक्ष,
भारतीय मजदूर संघ हरियाणा, छत्तानाला गढ़िया,
जगाधरी ।"

[सं 20012/13/78-पी एफ.-II]

New Delhi, the 7th May, 1985

S.O. 2253.—In pursuance of sub-paragraph (1) of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Labour and Rehabilitation (Department of Labour) No.S.O.2770 dated the 9th June, 1983 published in the Gazette of India, Part II, Section 3, sub-section (i) dated the 2nd July, 1963, namely:––

In the said notification :—

(i) against serial number 6 for the entry, the following entry shall be substituted, namely:—
"Shri.V.V.Gulati,
Managing Partner,
Steel and Steel Production,
Plot No.29, Sector 24,
Faridabad."

(ii) against serial number 9, for the entry, the following entry shall be substituted, namely :—
"Shri Indrasen Bansal,
President,
Bhartiya Mazdoor Sangh, Haryana,
Chattanala Gadiya,
Jagadri.".

[V.20012/13/78-PF.II]

का.आ. 2254.—केन्द्रीय सरकार, कर्मचारी भविष्य निधि और प्रकीर्ण उपबन्ध अधिनियम, 1952 (1952 का 19) की धारा 5क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के राजपत्र, भाग II, खण्ड 3(ii) दिनांक 28 मई, 1983 में प्रकाशित भारत सरकार के तत्कालीन श्रम और पुनर्वास मंत्रालय (श्रम विभाग) की अधिसूचना संख्या 2399 तारीख 11 मई, 1983 का निम्नलिखित संशोधन करती है ।

2. उक्त अधिसूचना में, क्रम संख्या 1 से 4 के सामने की प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएंगी :–

"1. श्रम मंत्रालय में राज्य मंत्री
भारत सरकार, नई दिल्ली

2 सचिव, श्रम मंत्रालय,
भारत सरकार, नई दिल्ली

3 अपर सचिव, श्रम मंत्रालय,
भारत सरकार, नई दिल्ली

4. सलाहकार (वित्त),
श्रम मंत्रालय,
भारत सरकार,
नई दिल्ली ।"

[संख्या बी-20012/4/82–एस.एस-2]

S.O. 2254.—In exercise of the powers conferred by sub-section (1) of section 5A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following amendments in the notification of the Government of India in the late Ministry of Labour and Rehabilitation (Department of Labour) No. S.O. 2399 dated the 11th May, 1983 published in Part II, Section 3(ii) of the Gazette of India, dated the 28th May, 1983

In the said notification, against the entries at serial No. 1 to 4, the following entries shall be substituted, namely:—

"1. Minister of State in the Ministry of Labour, Government of India, New Delhi.

2. Secretary to the Government of India, Ministry of Labour, New Delhi.

3. Additional Secretary to the Government of India, Ministry of Labour. New Delhi,

4. Financial Adviser. Ministry of Labour, Government of India. New Delhi";

[No. V 20012/4/82-SS.II]

का.आ. 2255.—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स दी अल्पना फायर वर्क्स फैक्टरी (प्रा.) लिमिटेड सिवाकाशी, अदीपक्कट्टाई विलेज, सिवाकाशी, सत्तुर तालुक, तमिलनाडु और 74/1, पुलिस स्टेशन रोड, सिवाकाशी, तमिलनाडु स्थित स्थानीय प्रशासन सहित, नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उप-धारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं. एस-35019(170)/85-एस एस-2]

S.O. 2255.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs The Alpna Fire Works Factory (P) Ltd, Sivakasi, Edikottai Village Sivakasi, Sotur Taluk, Tamil Nadu including its Adm. Office at 74/1, Police Station Road, Sivakasi-23 Tamil Nadu have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment

[No. S-35019(170)/85-SS-II]

का आ. 2256—केन्द्रीय सरकार को यह प्रतीत होता है कि मेसर्स यूनाइटिड जनरल इंडस्ट्रीज, ई-4, इंडस्ट्रियल एरिया, माहाली पंजाब नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा-1 की उप-धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं एस-35019(171)/85-एसएस-II]

S.O. 2256—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs United General Industries, E/4, Industrial Area, Mohali, Punjab, have agreed that the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub section (4) of Section 1 of the said Act the Central Government hereby applies the provisions of the said Act to the said establishment

[No S 35019(171 /85 SS-II]

का आ. 2257—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स श्री वेंकटेश्वर सर्विस, 10-ए, ईस्ट मैन स्ट्रीट वेदारनयम तमिलनाडु और नागाई रोड, थिरुथूराईपुन्डी स्थित हैड आफिस सहित नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार उक्त अधिनियम, की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं एस-35019(172)/85-एस एस-2]

S.O. 2257—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Sri Vankateswara Service, 10-A, East Main Street, Vedaranyam, Tamil Nadu including its Head Office at Nagai Road Thiruthuraipoondi, have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952), should be made applicable to the said establishment,

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act the Central Government hereby applies the provisions of the said Act to the said establishment

[No S-35019(172)/85-SS II]

का आ. 2258—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स प्रीमीयर प्लास्टिक्स नं. 276 थम्ब चेटी स्ट्रीट, मद्रास-600001, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा-1 की उप-धारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती ।

[सं. एस-35019(173)/85-एसएस-2]

S.O. 2258—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Premier Plastics, No 276, Thambu Chetty Street Madras 600001, Tamil Nadu have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishmnt,

Now, therefore in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No S-35019/173/85-SS-II]

का आ. 2258—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स अनु इंडस्ट्रीज नं. 9, टी एच रोड मद्रास-600081 तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 1 की उप-धारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं एस-35019(174)/85-एस एस-2]

S.O. 2259—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Anu Industries No 9, T H Road Madras-600081 Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952), should be made applicable to the said establishment,

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment

[No S 35019/174/85-SS II]

का आ. 2260—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स एकसाल केमिकेल्स प्लाट नं. 71 सिडको इंडस्ट्रियल एस्टेट रानीपेट-632403 तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 1 की उप-धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं एस-35019(175)/85-एस एस-2]

S.O 2260—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Aksol Chemicals, Plot No 71, Sidco Industrial Estate, Ranipat-632403, Tamil Nadu, have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act the Central Government hereby applies the provisions of the said Act to the said establishment.

[No S-35019/175/85-SS-II]

का. आ. 2261—केन्द्रीय सरकार को यह प्रतीत होता है कि इलैक्ट्रोनिक्स इंडिया, एल-12 डा वी.एस.आई. एस्टेट, मद्रास-41, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए ।

अत. केन्द्रीय सरकार उक्त अधिनियम की धारा-1 की उप-धारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है ।

[सं. एम-35019(176)/85-एम एस-2]

S.O. 2261 —Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Electronics India, L-12, Dr. V.S.I. Estate, Madras 41 Tamil Nadu have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019(176)/85-SS-II]

का०आ० 2262—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स बीना फेब्रिक्स, 183, रंगाई गोवर स्ट्रीट, कोइम्बटूर-641001 तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्णचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उप-धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019(177)/85- एस एस-2]

S.O. 2262.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Beena Fabrics, 183, Rangai Gowder Street, Coimbatore-641001, Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019/177/85-SS-II]

का आ 2263—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स डा जी आर. बालासुब्रामनियम नर्सिंग होम, 11/14, एफ अंसारी स्ट्रीट, कटटोर कोइम्बटूर-9, तमिलनाडु नामक स्थान के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा -4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019(178)/85-एस एस-2]

S.O. 2263.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Dr. G. R. Balasubramaniam Nursing Home, 11/14, F. Ansari Street, Kottore, Coimbatore-9 have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019/178/85-SS-II]

का. आ. 2264—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स एस रामामूर्थि माईनस, 58, कस्थूरीबाई स्ट्रीट, पानरूति-607106 तमिलनाडु नामक स्थान के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एम-35019 (179)/85- एस एस-2]

S.O. 2264.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs S. Ramamurthy Mines, 58, Kasthuribai Street, Panrutti-607106, Tamil Nadu, have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019/179/85-SS-II]

का. आ. 2265—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स प्रेसीकोम (प्रा.) लिमिटेड, 67, अवनाशी रोड, कोइम्बटूर-18, और उसका प्रशासनिक कार्यालय 317, अवनाशी रोड, कोइम्बटूर-18 स्थित नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019 (180)/85-एम एस-2]

S.O. 2265 —Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Precicom Private Limited, 67, Avanshi Road, Coimbatore-18 including its Adm. Office at 317, Avanashi Road, Coimbatore-18 have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said A t to the said establishment.

[No. S-35019/180/85-SS-II]

का. आ. 2266—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स मेट्रालाईजर्स, 10, कालीमानपुरम स्ट्रीट, मद्रास-2, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस- 35019 (181)/85- एस एस-2]

S.O. 2266.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Madras Metalizers, 10, Kalimanpuram Street, Madras-2, Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019/181/85-SS-II]

का. आ. 2267—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स तेनाजिक प्रिंटर्स, 802, मेन रोड, कोविलपति-627701, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 1 की उपधारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस- 35019(182)/85- एस एस-2]

S.O. 2267.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Tenzing Printers, 802, Main Road, Kovilpatti-627701, Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019|182|85-SS-II]

का. आ. 2268—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स जीयोजि आर्चीटेक्टस प्राइवेट लिमिटेड 8/1- ए, आर्ट्स कालिज रोड, कोइम्बटूर-18, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019(183)/85-एस एस-2]

S.O. 2268.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs George Architects Private Limited, 8|2-A, Arts College Road, Coimbatore-641018, Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019|183|85-SS-II]

का. आ. 2269—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स ग्लोबल केलशियम प्राइवेट लिमिटेड प्लाट नं. 126, सिपकोट इंडस्ट्रियल कम्पलेक्स, होसूर- 635126, तमिलनाडु नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा-1 की उपधारा-4 द्वारा प्रदत्त शक्तियो का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019 (184)/85-एस एस-2]

S.O. 2269.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Global Calcium Private Limited, Plot No. 126, Sipcot Inustrial Complex, Hosur-635126, Tamil Nadu have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019|184|85-SS-II]

का. आ. 2270—केन्द्रीय सरकार को यह प्रतीत होता है कि मै. दी वारंगा को-आपरेटिव एग्रीकल्चरल बैंक लिमिटेड, सहकारी निलाया, पोस्ट आफिस वारंगा, कारकाला, कनाडा डिस्ट्रिक्ट, कर्नाटक नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियो की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा-1 की उपधारा -4 द्वारा प्रदत्त शक्तियो का प्रयोग करत हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस-35019 (185)/85-एस एस -2]

S.O. 2270.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs The Varanga Co-operative Agricultural Bank Limited, Sahakari Nilaya, Post Office Varanga, Karakala, Kannada District, Karnataka have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35019|185|85-SS-II]

का. आ. 2271—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स श्री किसान कोप्रेटिव मिल्क प्रोड्यूसर्स यूनियन लि., पोस्ट आफिस– राणा घाट–1, जि. नादिया वेस्ट बंगाल और शाखाये, (i) कृष्णगढ़ ब्रांच आफिस नेदारपारा जिला नादिया (ii) बानगाव आफिस बस स्टैंड के पास बानगाव, 24 परगना और (iii) कलेक्शन सैंटर (फैक्ट्री) फुलिया जिला नादिया में स्थित नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा–1 की उपधारा–4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस–35017(42) 85–एस एस–2]

S.O. 2271.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs The Krishan Co-operative Milk Producers' Union Limited, Post Office Ranaghat-741201, District Nadia, West Bengal including its branches at (i) Krishnagarh Branch Office at Naidarpara District Nadia (ii) Bongaon 4, Office near Bus Stand, Bongaon, 24-Parganas, (iii) Collection Centre (Factory) at Fulia District Nadia have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35017|42|85-SS-II]

का. आ. 2272—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स इस्टरप्राइजिज 48, डमडम रोड, कलकत्ता–74, और हैड आफिस 41, महात्मा गांधी रोड, कलकत्ता–9 नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा –1 की उपधारा –4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त अधिनियम स्थापन को लागू करती है।

[सं. एस–35017 (50)/85–एस एस–2]

S.O. 2272.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Esko Enterprises 48, Dum Dum Road, Calcutta-700074 including Head office at 41, Mahatma Gandhi Road Calcutta-700009, have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment;

[No. S-35017(50)|85-SS-II]

का. आ 2273—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स के. डी. इंटरप्राइजिज 47, जी. टी. रोड, (नार्थ) बेलूर पोस्ट आफिस बेलूरमाथ, हावड़ा (पश्चिम बंगाल), नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा –1 की उपधारा–4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस–35017(51)/85–एस एस–2]

S.O. 2273.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs K. D. Enterprise 47, G.T. Road, (North) Belur P.O. Belurmath, Howrah (W.B.) have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35017(51)|85-SS-II]

का. आ. 2274—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स दुर्गापुर ट्रांसपोर्ट कारपोरेशन 25, गंगाधर बाबू लेन, कलकत्ता–12, नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा–1 की उपधारा–4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस–35017(52)/85–एस एस–2]

S.O. 2274.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Durgapur Transport Corporation 25, Gangadhar Babu Lane, Calcutta-12 have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35017(52)|85-SS-II]

का. आ. 2275—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स ए० सी० मोहम्मद एंड अबदुरहमान प्रोपर्टीज, पी०–16 बेनटिंग स्ट्रीट कलकत्ता–1 नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा–1 की उपधारा–4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस–35017(53)/85–एस एस–2]

S.O. 2275.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs A. C. Mohamed and Abdurahaman Properties P-16 Bentinck Street Calcutta-1 have agreed that the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35017(53)|85-SS-II]

का. आ. 2276—केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स बंगाल रिसर्च क्लीनिक कंपनी (प्रा०) लि., प्रधान नगर, सिलीगुडी–3, दार्जिलिंग (वैस्ट बंगाल) नामक स्थापन के सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) के उपबंध उक्त स्थापन को लागू किए जाने चाहिए।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा–1 की उपधारा–4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम के उपबंध उक्त स्थापन को लागू करती है।

[सं. एस–35017 (54)/85–एस एस–2]

S.O. 2276.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs North Bengal Research Clinic Co., (P) Ltd. Pradhan Nagar, Siliguri-3, Darjeeling (West Bengal) have agreed that the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of Section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

[No. S-35017(54)/85-SS-II]

नई दिल्ली, 13 मई, 1985

का०आ० 2277—केन्द्रीय सरकार, कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) की धारा 17 की उपधारा (4) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) तारीख 25 सितम्बर, 1982 में प्रकाशित भारत सरकार के भूतपूर्व श्रम मंत्रालय की अधिसूचना सं० का० आ० 3398, तारीख 9 सितम्बर, 1982 में निम्नलिखित उपांतरण करती है, अर्थात् "तीन वर्ष के लिये" शब्दों के स्थान पर "25 सितम्बर, 1982 से और 29 फरवरी, 1984 तक जिसमें यह तारीख भी सम्मिलित है की अवधि के लिये" शब्द और अंक रखे जायेंगे।

[सं० एस–35014/125/82-पी एफ-II एस एस-IV]

New Delhi, the 13th May, 1985

S.O. 2277.—In exercise of the powers conferred by clause (c) of sub-section (4) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following modification in the notification of the Government of India in the late Ministry of Labour, No. S.O. 3398 dated the 9th September, 1982, published in the Gazette of India Part II, Section 3, sub-section (ii), dated 25th September, 1982 namely for the words 'for a period of three years', the wors and figures 'for a period from the 25th September, 1982 and upto and inclusive of the 29th February, 1984', shall be substituted.

[No. S-35014/125/82-P.F.II(SS.IV)]

नई दिल्ली 14 मई, 1985

का०आ० 2278– कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 16 मई, 1985 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के अध्याय 4 (धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) और अध्याय 5 और 6 [धारा 76 की उप-धारा (i) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध पंजाब राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात् :—

"मगरूर जिले में मलेरकोटला तहसील में जीतवाल कलां राजस्व ग्राम हद बस्त संख्या 34।"

[संख्या एस-38013/9/85-एसएस-I]
ए० के० भट्टराई, अवर सचिव

New Delhi, the 14th May, 1985

S.O. 2278.—In exrcise of the powers conferred by sub-section (3) of section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 16th May, 1985 as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (1) of section 76 and sections 77, 78, 79 and 81 which already been brought into force] of the said Act shall come into force in the following areas in the State of Punjab, namely :—

"Revenue Village Jeetwal Kalan Had Bast No. 34 in Tehsil Malerkotla District Sangrur."

[No. S-38013/9/85-SS-I]
A. K. BHATTARAI, Under Secy.

नई दिल्ली 8 मई, 1985

का०आ०2279- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक आफ इंडिया के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-85 को प्राप्त हुआ था।

New Delhi, the 8th May, 1985

S.O. 2279.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial Dispute between the employers in relation to the Bank of India, and their workmen, which was received by the Central Government on the 1st May, 1985.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR, (M.P.)

Case No. CGIT/LC(R)(56) of 1984

PARTIES :

Employers in relation to the Management of Bank of India, Jabalpur (M.P.)

AND

Their workman Shri S. S. Hazari.

APPEARANCE :

Mr. V. R. Rao, Industrial Relations Officer, Bank of India, Regional Office, Jabalpur.

Mr. S. S. Hazari,—the workman in person.

INDUSTRY : Banking. DISTRICT : Jabalpur (M.P.)

AWARD

The Central Government in exercise of its powers under section 10 of the Industrial Disputes Act vide its notification No. L-12012/21/84-D.II(A), dated the 11th July, 1984, referred the following question for adjudication to this Tribunal :—

"Whether the action of the management of Bank of India, Jabalpur (M.P.) in relation to their Rahatgarh Branch, Saugor (M.P.), in awarding the penalties of stoppage of 3 increments of Shri S. S. Hazari, Clerk-cum-Cashier having the effect of postponing his future increments and withdrawal of special allowance on permanent basis under their orders No. PERS/IL/171, dated 23-10-82 and No. PERS/IL/196 dated 23-11-82 is disproportionate to the charges levelled against the workman? If so, to what relief is the workman concerned entitled?".

The delinquent workman was charge-sheeted for misconducts enumerated in Annexure 6. They were for demanding 50 per cent commission for the insurance for loans financed by Bank, secondly for making a false complaint against a Veterinary doctor thirdly for refusing to accept a Rs 50 currency note given by a customer at the counter, fourthly leaving the bank premises without taking prior permission of the Branch Manager, 5thly for instigating one Bipin Bihari Dixit to give threat to Madan Lal Silokey, Cashier and lastly for disclosing confidential information and offical secrets to public. It appears that during the course of the inquiry of one stage he had accepted the charges and therefore the Bank imposed punishment by ordering stoppage of three increments.

At the time of arguments, Shri S. S. Hazari, the workman pointed out that the police had been called during the enquiry and therefore he had been pressurised in submitting his defence. It is not disputed that the police had been called at the time of disciplinary enquiry. The influence of the police in such circumstances cannot be ruled out. I direct that the departmental enquiry be started de novo without calling the police. I, therefore direct that the Bank will canduct a domestic enquiry afresh after appointing an Enquiry Officer and after reframing the charges so as to give proper particulars. The delinquent officer be given fresh opportunity to lead evidence in defence. He has stated that his admission was because of inducement made to him that he would be let off if he accepted the charges earlier he had denied the charges. Therefore the Enquiry Officer must investigate these charges independent of any admission made by the delinquent officer. Since the admission if any was made under some sort of inducement that no action would be taken against him, the admission shall not be taken into consideration while dealing with the misconducts.

If the charges are proved the punishment metted out to the delinquent officer would stand, or may be modified by the Bank as it deemed fit by the management. Needless to say, if the charges are not proved, no punishment would be imposed on him.

ORDER

I threfore order that the enquiry be stated de-novo subject to the observations made earlier. Both the parties agree that this enquiry will be finished within three months. There shall be no order as to costs.

K. K. DUBE, Presiding Officer

Datd : 23-4-1985.

[No.L-12012/21/84-D.II(A)]
N. K. VERMA, Desk Officer

नई दिल्ली, 10 मई 1985

का० आ० 2180.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, ग्रीन्डलेज बैंक लिमिटेड के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अप्रैल 1985 को प्राप्त हुआ था।

New Delhi, the 10th May, 1985

S.O. 2180.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the National Industrial Tribunal, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Grindlays Bank Ltd., and their workmen, which was received by the Central Government on the 29th April, 1985.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL, BOMBAY

PRESENT :

Dr. Justice R. D. Tulpule Esqr., Presiding Officer.

Reference No. NTB-2 of 1980

PARTIES :

Management of Grindlays Bank Ltd.,

AND

Their workmen.

APPEARANCES :

For the employer—Mr. Krishnamurthy.

For the workmen—Mr. Subramanyam.

INDUSTRY : Banking STATE : Maharashtra.

Bombay, dated the 26th day of March, 1985

AWARD PART-I

This is a reference under Section 10, sub-section 1A of the Industrial Disputes Act, relating to the Grindlays Bank which has branches in more States than one and affecting workmen working therein. The schedule to the reference sets out three demands which are referred to this National Tribunal for adjudication.

2. The circumstances in which this reference came to be made may be set out. They appear also in the annexure which is filed by the Federation to its statement of claim. It appears that a strike notice was served by the Grindlay's Bank Employees Federation, hereinafter referred to as 'Federation' on the management of the Grindlays' Bank Ltd., on 29th November 1978. Thereafter, the matter was taken up in conciliation and the conciliation proceedings were held by the Assistant Labour Commissioner. The conciliaton proceedings were held by the Assistant Labour Commissioner. The conciliation proceedings ultimately resulted in a settlement which is dated 27-12-1978.

3. Pursuant to that settlement and since the Federation had raised certain demands against the Bank and as those demands were not conceded, the disputes were taken up in the year 1978. On which discussions took place between January to October 1979. As no settlement was reached, the employees went on agitation including strike from 5th November, 1979. Conciliation efforts of the Regional Labour Commissioner again failed and ultimately, a tripartite settlement was signed on 1st February, 1980 by which the strike was withdawn and the dispute was referred in terms of the failure report of the Regional Labour Commissioner to this Tribunal, vide the reference oder dated 12th Febuary, 1980. Though that was so, the hearing in this reference could begin only much later in the year 1984.

4. In the course of the reference, the Federation as well as the Grindlays Bank have delivered various sets of numbers pleadings by way of statement of claim, written statements, rejoinders and sur-rejoinders which run into several pages. Inevitably resulting in repetition and duplication. At a certain stage, another union representing the employees called "All India Grindlays Bank Employees Association", hereinafter referred to as "Association", also sought to be joined as a party to the reference and was so permited to be joined. It filed its written statement on 23rd August 1982, initiating a fresh volley of statements by the Bank as well as the Federation. Thereafter a supplementary written statement and an amendment to the written statement was filed by he Girndlays Bank seeking certain amendments to

its written statement of 12th March, 1984. That was objected ultimately an order was passed on 25th June 1984 permitting the amendment or supplement to written statement and clarifying the position in that behalf as set out in that order.

5. Though as set out above, there are only three issues which have been referred to this tribunal for adjudication, pleadings of the parties have tended to be prolix and massive. I intend to refer briefly to the salient points made out by the three distinct parties to this reference. It may however be stated that so far as the Association is concerned, I have not been exactly able to locate its position namely, whether it was arraigned on the side of the Federation or on the side of the employer-bank, but more of that later.

6. The Federation, after setting out the genesis of the dispute to which I have briefly made a reference, contended that the Grindlays Bank is one of the leading foreign banks operating in India and is amongst the most prosperous foreign banks. That the service conditions in the Banking Industry as such were sought to be formulated on a minimum basis of salary, wages and other service conditions and prescribed in what is known as Shastri Award and the De ai Award in the banking industry. Since these service conditions set out down with the Tribunal, according to the Federation, are minimum, various banks in India by mutual negotiations altered and changed for the better service conditions for their employees, like Bank of ndia, the British Bank of Middle East, Hong Kong Bank etc. The Federation then pointed out that in the Grindlays Bank, there was what was called in lunch allowance an additional allowance and bonus which came to be regulated and paid in accordance with the various agreements entered into between the employees and the Bank, to which a reference would be made later. According to the Federation, at a certain stage, the employer-bank refused to enter into any settlement to vary and revise these benefits resulting in erosion of the real earnings of the employees in the Grindlays Bank, and placing them in a disadvantageous situation compared to other employees of less prosperous foreign banks operating in India That the Bank also effected mechanisation of some of the jobs which were being done manually till then in the Bank resulting in great discontent among the employees. The mechanisation, according to the Federation, was not in accordance with the bipartite agreement of the year 1966 and was pushed forward with a view to increase the profits of the Bank and to cause hardship to the workmen. This has resulted in considerable reduction of staff strength in the Bank.

7. The Federation then referred to various figures for various years of the time deposits and the Savings Bank and current accounts, of the advances by the bank in various years and compared these figures, or relative figures of the affairs of the Grindlays Bank and the other foreign banks and sought to establish that the Grindlays Bank, among the foreign banks, is way ahead and in a strong and prosperous position in every aspect of the banking industry. Comparing its profits and comparing the income of the Bank from its Indian business and what was sent to its head office in London, it sought to establish that the Indian branch business of the Bank was by far the largest and the most lucrative, resulting in large profits as compared to the operations of the Bank in other countries. It also compared the position of the Grindlays Bank vis-a-vis Indian banks from the point of view of its profits and income and sought to establish that the Grindlays Bank held a comparatively high position taking profits into account than the Indian compared banks. On the compared to the Indian banks, the employment in the Grindother hand, though the profits of the Bank have risen, as lays Bank has fallen, while the picture is otherwise in the Indian banks. Those figures of curtailment of employment in the Grindlays Bank and the increase in the employment in the Scheduled Indian banks either in the private sector or in the public sector have also been set out. This prosperity and position, according to the Federation has been realised by the Grindlays Bank, by adopting various methods which are set out by it in paragraph 34 of its statement of claim, which relate to banking business as well as relations with its employees. Since we are not concerned with the bank's relations with its employees, I need not refer to them, except that the relevant complaint of the Federation seems to be that the bank "extracts" more work from these employees through rationalisation, reorganisation and mechanisation which is unparelled in the banking industry. Fresh employment has come to a standstill in this bank since 1974. There has been no replacement of the staff who have resigned or died or retired.

8. Beginning with the circumstances, justifying the raising of the demands, the Federation has referred to the steep rise in cost of living index from the year 1970 onwards. The rise in the bank's financial position, strength and profits and considerably disproportionate and frequent changes and revisions granted to the officer cadre of the bank as against employees whose wages structure has remained constant. As pointed out, the bank has improved the wage structures of its officer cadre even beyond the recommendations for the entire banking industry as a whole, as also the perquisites and other allowances admissible to them, and changes have been made in that wage structure and allowances from time to time. Apart from high wages, the officer cadre is in enjoyment of dearness allowance, house rent allowance and additional house rent allowance, servant allowance, reimbursement of utilities expenses, club entrance fees and subscription, and house cleaning expense allowance. Thus, according to the Federation, these are higher than any bank in India and any other foreign bank operating in India.

9. Dealing with the specific demand, it traces the history of the additional allowance which came into existence in this bank firstly in the National Bank in the year 1958. It was granted later as a result of the settlement. The additional employees of the Lloyd Bank when that bank merged. It was initially not granted to employees of the Lloyd Bank, but was granted later as a result of the settlement. The additional allowance granted by the 1967 settlement was later revised in 1970 which is being continued. This additional allowance, it is admitted first came into existence by way of tax relief. According to the Federation, it lost its character of tax relief after the financial act of 1962 came into force and thereafter what was initially by way of reimbursement of the income-tax remained as a mere additional allowance.

10. Since 1970, the Bank refused to revise this additional allowance while the other foreign banks operating in India have steadily revised the additional allowance granted to its employees. In most of the foreign banks, the wages paid to their employees were about the same as those in the Grindlays Bank. After 1970, however, the position began to change and while the employment conditions and emoluments of employees in other foreign banks increased and appear much more favourable, those in the Grindlays Bank continued to remain at their former level. The additional allowance was increased by the Chartered Bank in 1978, by the Merchantile Bank in 1973, by the British Bank of Middle East in 1973, by the French Bank in 1972 and 1978. This has resulted in the wage structure and total emoluments of the Grindlays Bank employees becoming unfavourable compared to the wages and other emoluments of the employees of other foreign banks. There was therefore a great disparity between the two sets of employees. During this very period, according to the Federation, the Bank revised its officers wage scales and benefits five times. It, therefore, formulated its demand for additional allowance from 1st of April 1975 at a rate of 8% of gross salary of Rs. 10,000, at 10 per cent between gross salary of Rs. 10,000 and Rs. 15,000, and at 12 per cent over gross salary of Rs. 15,000 subject to a maximum of Rs. 2,100.

11. As regards lunch allowance the Federation stated no lunch allowance was paid, nor any free lunch given by any of the constituent banks of the Grindlays Bank, namely, National Bank, Grindlays Bank and the Lloyds Bank prior to 1970. It was first started in the year 1966-67 with payment of Rs 50/- per month This came to be revised as a result of the agreement dated 16th September, 1970 According to the federation, this allowance has become "obsolete, outdated and has lost its purchasing power as a result of steep rise in the consumer price index since 1970. The consumer price index, it pointed out has considerably risen much above what it was in 1970. Comparing the lunch allowance prevailing in

other banks, it pointed out that the Chartered Bank and the City Bank were paying this lunch allowance even prior to 1970 and that all the foreign banks fell in line and started paying Rs. 50|- after this agreement. However, the other banks have revised the lunch allowance thereafter. Thus the Chartered Bank raised it to Rs. 65|- in 1975 and to Rs.75 in 1977. The Merchantile Bank to Rs. 75|- in 1975 and to Rs. 100|- from August 1979. Similarly, the British Bank, The American Express and the French Bank have also raised the lunch allowances in the year 1978 and 1979 much above Rs. 50|-, which is being paid in Grindlays Bank. The Federation pointed out that almost all the foreign banks have revised the lunch allowance and are paying it at a much higher rate, subsequent to 1970. It, therefore, demanded increase in the lunch allowance upto Rs. 120|- per month from 1st January, 1975.

12. Dealing with the canteen subsidy scheme, which is part of its demand No. 1, it pointed out that it is in existance to only at such places where the canteens are run by the unions and that this subsidy came into being to assist the unions managing the canteens, "to meet the expenses of the employees employed in such canteens to cover up wage bills, medical expenses and bonus" to these employees. This subsidy was initially granted at Rs. 5|- per workman and later raised to Rs. 6 from 1st January 1969.

13. That there was enormus price rise from 1968-69 and therefore unions made a demand seeking Rs. 15|- by way of canteen subsidy per person from Rs. 6 - which the Bank refused to consider and discuss. It, therefore, demanded that the canteen subsidy be granted at the rate of Rs. 15|- per workman with effect from 1st January 1979, corresponding with canteen subsidy that is being granted in other foreign banks. This was raised and granted at Rs. 12|- in these banks. The bank has been providing canteen facilities and incurring expenses in some of its big branches for officers and staff at special rates. They are incurring progressively increased costs for providing this facility to its officers and non-award staff.

14. The third part of its demand No. 1 relates to housing loans. The Bank advances funds to its employees, for building houses since the year 1967. The maximum loan permissible for clerical staff was Rs. 25,000 and for sub-staff Rs. 12,500|- at interest of Rs. 4% per annum. This facility was not extended to the staff which wanted houses at their native places. This was later increased to Rs. 30,000 and 15,000 respectively for clerical and sub-staff respectively as a result of settlement of 16 September, 1970. The interest rate was also reduced from 4 per cent to 2 per cent. The Federation pointed out that the bank had in 1967 expressed its willingness "to provide reasonable housing accommodation to the members of the subordinate staff at nominal rate of rent". This was however, given up and the Bank made no efforts to procure housing accommodation which could be given to the Award Staff at a low rent. The Federation points out that the cost of building material has gone up many-fold since 1970 and it is virtually impossible to construct a house in a loan of Rs. 30,000|-. Though this Bank has not revised the maximum limit of housing loan, other banks including foreign banks have done so. The Bank also has different standards and discriminates between its officer staff and other staff in the matter of housing loan. The maximum in the case of officers is much higher. It pointed out that the Third Pay Commission has recommended this as a welfare measure recommending raising of the maximum limit to Rs. 75,000 or 75 months pay. In other banks, the maximum has been raised to 60 months salary. The Federation, therefore, demanded housing loan at 75 months gross salary, subject to a minimum of Rs. 30,000 and a maximum of Rs. 75,000.

15. The second item of demand relates to bonus. The Federation pointed out that bonus was being paid in the Grindlays Bank right from 1920, initially at the rate of 10 per cent of the basic salary. That it was also prevailing in the Lloyd Bank from 1928. In both these banks, this payment continued till 1957 and 60 respectively. In the National Bank, it was 20 per cent right from 1920 to 1960. On the merger, the Grindlays Bank employees started getting also 20 per cent. This was also extended on merger to Lloyd Bank. This was paid at 20 per cent increasing from 10 per cent in National and Grindlays Banks. Of this 20 per cent bonus, 15 per cent was paid in cash and 5 per cent credited to the Provident Fund.

16. The Federation pointed out that disputes regarding bonus were being raised since a very long time. This bonus dispute was resolved on an ad-hoc basis and for the years 1956 to 1964, additional 3.2 per cent bonus was paid for all these years over above what was paid.

17. The Bonus Act came into force in 1965. The Bank has started paying 20 per cent of the pay, dearness allowance and special allowance by way of bonus in different instalments. In 1967, the total bonus paid was 18 per cent in 1968 17-1/2 per cent, and 1969 18 per cent and 1970 20 per cent. These payments according to the Federation, were not according to the formulate of the Bonus Act, and were also not paid once in a year, but on different dates by instalments. This was not connected with profits. The other conditions of Bonus Act relating to the salary ceilings of Rs. 750 and Rs. 1600 were sought to be enforced. But on account of the agitation, a settlement was entered into for the years 1971 and 1973 at a rate of 20 per cent on the gross salary as defined in the Bonus Act. By this agreement the limit laid down was agreed to be raised. The agreement also provided that for the years 1971 and 72, an additional 1¼ per cent of payment was made as stipulated therein. This was not however, applied for the year 1973.

18. Next settlement was for the year 1974-75 entered into on 15th September 1974. It was 20% on basic pay, special allowance, dearness allowance and city compensatory allowance, and the limit of Rs. 750 in Bonus Act was raised to Rs. 1,100 while the upper limit of Rs. 1,600 has been raised to Rs. 2,000 as laid down in Section 2(13) of Bonus Act.

19. According to the Federation, pursuant to the settlement of the 15th September 1975 and 15th July 1972, bonus benefit was extended even to employees drawing salary exceeding Rs. 1,600 and the limit of the bonus amount of Rs. 750 was also exceeded. This the Federation says, was consistent with the practices prevailing in other foreign banks.

20. From 1976, the Bonus ordinance was promulgated. The Federation says, the bank refused to pay bonus except in accordance with the Bonus Act. In other words, it refused to pay bonus exceeding Rs. 750 and to any worker with salary exceeding Rs. 1,600. This according to the Federation, resulted in a further drop in the total earnings of the employees of the Grindlays Bank, as compared with the employees in other foreign banks. It then set out various payments which were agreed to in Chartered Bank, Merchantile Bank, British Bank for Middle East and the American Express between the years 1976 to 1982 and pointed out that the maximum has been raised progressively in all these banks from a sum of Rs. 2,640 upto Rs. 3,400. Besides lump sum payments were also made in certain salary ranges. Thus, the Grindlays Bank did not pay bonus to employees drawing salary in excess of Rs. 1,600 and between the salary range of Rs. 750 to Rs. 1,600 bonus was not paid at the rate of 20 per cent of the gross salary, but only upto Rs. 750. The Federation then points out that employees drawing salary above Rs. 1,600 are not workmen withi nthe meaning of the Bonus Act. However, it is necessary to protect their salary above Rs. 1,600 are not workmen within the meaning sonable and also justiceable by the Tribunal. At that alone will make their emoluments inclusive of bonus comparable with other employees in foreign banks drawing salaries exceeding Rs. 1,600. That the foreign banks have continued to pay bonus to employees drawing salaries over Rs. 1600 notwithstanding the provisions of the Bonus Act by way of settlements and this continued even after 1976. It then referred to the decision of the Supreme Court in American Express International Banking Corporation case and the provisions of the Income Tax Act and than submitted that the demand for bonus for employees drawing a salary of above Rs. 1600 can be a matter of service conditions. The Payment of Bonus Act is not a comprehensive legislation cover-

ing bonus of all kinds and in all circumstances, but it is only bonus linked with profit or productivity which is covered by the provisions of the Bonus Act. Similar foreign banks operating in India have been paying bonus irrespectively of emoluments of the employees to them at all levels as a part of condition of their service. The refusal or non-payment by Grindlays Bank to its employees, any payment in excess of Rs. 750 or persons drawing salary in excess of Rs. 1500 has resulted in a further widening of the gap between the emoluments of the employees of the instant bank and that of other foreign banks. The comparative statements of emoluments with bonus element for the years 1976 to 1979 for various banks are then set out at pages 72 to 75. With the help of this, it is pointed out that gross disparity has resulted in the earnings of the employees of the other foreign banks vis-a-vis Grindlays Bank. According to the Federation, right from the year 1925-56, bonus was never paid on the basis of profit sharing, or bonus linked to profit. It was paid on the basis of agreements without reference to the profit position of the company. It was, therefore, according to it not a profit sharing bonus, to which Payment of Bonus Act would be attracted and would be a complete answer. The practice of the Bank to pay bonus to its employees for all these years since 1920 irrespective of the salary, without reference to the profits has become a custom or practice or usage, whereas its sudden withdrawal has resulted in breach and loss to the employees It has given rise to conflict and industrial unrest. Bonus is being paid as a result of settlement in the foreign banks on the same basis and practice. It is liable to be paid also as a part of the service conditions in the Grindlays Bank and hence the reference as the Bank does not agree to its payment This practice of payment of bonus and the method and circumstances have hardened into service conditions prevailing in the bank, which can not be unilaterally withdrawn. The Federation also pointed out that not only the foreign banks which are paying bonus without regard to the Payment of Bonus Act, but also other private companies and public sector undertakings such as Pfizer Ltd., Hindustan Petroleum Corporation Ltd., Bombay, Parke Davis, Glaxo Laboratories (India) Ltd. and others are paying bonus not strictly according to the Bonus Act.

21. As regards the third demand, relating to the scope for further expansion of mechanisation and its extent and conditions, the Federation submitted that here is no only no scope, but whatever mechanisation adopted should be halted and should be reverted so as to protect the employment of all the employees, as mechanisation has resulted in displacement of employees. Though foreign banks have resorted to mechanisation though differing in scope and practice, major Indian Banks of large size have not resorted to mechanisation. Whichever banks have resorted to mechanisation, did not however, reduce the number of employees, but increased its staff strength on the contrary. While in none of the other Indian banks, there was any surplus labour, in Grindlays Bank, it has resulted in rendering large number of employees surplus. The Federation then pointed out that mechanisation was resorted to by the Grindlays Bank at its various branches before 1966. In 1966, after the Desai Award was terminated, bipartite negotiations took place between the employees in the banking industry and Banks, as such resulting in a settlement Chapter-6 thereof relates to mechanisation. The Federation then set out clauses 6.1, 6.2 and 6.3 of that settlement and says that consequent to the settlement, mechanisation was adopted, which so far as the Grindlays Bank was concerned, resulted in loss of jobs and reduction in staff strength progressively from year to year at all level. This, according to the Federation, is illegal and unfair. The Bank, according to it, has brought about retrenchement by back-door In the branches of the major cities like Bombay and Calcutta. It also pointed out the consequences of mechanisation on society, as it is a job-killer and reduces the number of men which would be required to do the same job Mechanisation, therefore, according to the Federation, which it seeks to substantiate with reference to various reports and studies, is a problem which requires to be solved with imagination and patience so as not to produce unemployment and on the contrary benefit all the three sections, namely, the employer, society and the user, resulting in least displacement of labour. The Federation, therefore, suggested that there should be no further mechanisation, and on the other hand there sould be a stop to the existing mechanisation and the bank should be directed to retrace some of the steps in that behalf.

22. In answer to this statement of claim filed by the Federation, the Bank filed its first written statement on the 27th of August, 1980. By it, it raised certain points to which I shall come in dealing with the reply delivered by the Bank. This called for, however, a reply or a written statement by the Federation in reply to the Bank's statement dated 27th August, 1980. That was delivered on 27th October, 1980. The Federation thereby refuted the two preliminary objections raised by the Bank of non-termination of settlement and claim relating to Bonus.

23. The Federation pointed out that the settlement has been properly terminated. That no form of termination was prescribed, and in the various paragraphs following and in paragraphs 3 to 11, it added that the settlement was terminated both expressly and by implication. It also pointed out that in the agreement dated 1st August, 1979, did not prohibit the Federation from raising the instant demands. It added that these demands were raised by its letters dated 21-10-1974 and 22-4-1975 that before the settlement of the 1st August, 1979. The settlement did not cover any outstanding or pending demands.

24. According to the Federation, resolutions were passed by the General Council of the Federation on 3rd and 4th July 1974, to the effect that all settlements should be revised and that a copy of the resolution should be sent to the employer bank. That the Bank in its correspondance called upon the Federation to say what the demands were which required a revision and a fresh list of demands was served by letter of 21st October, 1974 which letter cover the present demands. The Federation, then referred to some other correspondance in this connection indicating that the demands were being prosecuted by the Federation and considered by the Bank It also, further, pointed out that the Bank at no stage earlier, either in correspondence or in conciliation proceedings, raised the preliminary objections regarding existence of the settlement and non-termination. Even at the stage when the strike was settled and an understanding reached on 4th February, 1980, the existence of the settlement and the agreement of 1st August, 1979 was not raised as a bar by the Bank. They therefore contended that the Bank has started now raising these preliminary objections.

25. With regard to the payment of bonus, it submitted that demand concerning workmen with salary above Rs. 1600 was not made under the Bonus Act. That these workmen have always contributed to the profits of the bank and apparently it is the Federations contention which is clear from the subsequent pleadings, that bonus to these employees and others is claimed as a part of the service conditions, as also the quantum and raising of the maximum limit of bonus.

26. Dealing with the Bank's plea that service conditions in banking industry are standardised and are uniform and that any attempt to tinker with them or to set up a different pattern would merely produce unrest in the industry and is not desirable or healthy, the Federation contended that the Tribunals, namely the Shastri Tribunal and Desai Tribunal, never wanted to standardise the service conditions. What was done was to prescribe only minimum servcie conditions and wages. That apart from these awards wages settlements have been reached by the Indian banks for improving the service conditions of their employees as also by the foreign banks.

27. As regards the additional allowance, it was the Federation's contention that the demand was not as a compensatory allowance for Income Tax, but that the grant of the allowance "has become a matter of service conditions in the foreign Banks." For nearly last 30 years, every foreign bank has been paying this allowance and has "increased this

allowance from time to time" excepting the Grindlays Bank. It pointed out that the Shastri's Tribunal confirmed this grant of additional allowance and therefore there was no question of its being taken away now. The present demand is only confined to its upward revision. It then pointed out that the Grindlays Bank workmen were not receiving any benefit to compensate Income Tax liability prior to its merger with the National Bank. They started getting it only from 1958. The demand virtually is for protection of the real wages of the workmen and to bring their service conditions on par with other foreign banks which are in a class by themselves. The principle of industry-cum-region, according to it, in the circumstances justified the raising of the allowance in Grindlays Bank, consistent with and in consonance with the practice and its scale prevailing in other foreign banks. So was also its contention with regard to launch allowance and canteen subsidy, as well as housing loan.

28. It pointed out that the circumstances that wages are linked with dearness allowance, and that grant of dearness allowance with dearness allowance is irrelevant because it is an increase in lunch allowance, was not a claim by way of additional remuneration or additional allowance or addition to basic wages and dearness allowance. Linking the lunch allowance with dearness allowance is irrelevant because it is a part of the service conditions. It contended that nearly 30 to 40 per cent of the bank employees in every segment of the industry and foreign banks have been paying better wages and better service conditions as compared to those prevailing in the Grindlays Bank. The canteen subsidy itself was also a service condition and not a welfare measure. It was given not to subsidise the food prices, but to enable the union committees to pay wages to the workmen employed in the canteen. This was a historical fact and situation.

29. The prices of food stuffs in the canteen are much higher but that the wage bill of the canteen employees is also getting up higher and higher. The subsidy merely goes to meet a part of their wage bill. The canteen subsidy demand, according to the Federation, is based "on the fact that after the bank agrees (agreed) to pay the wages of workmen employed in the canteen as canteen subsidy, wages of employees have gone up substantially and in order to compensate and neutralise the budget" this demand is made. The demand for increase in the housing loan limit is also in unison and consonance with what is being extended in other foreign banks and nationalised baks.

30. I have already pointed out that what the Federation's contention with regard to the bonus claim is viz., that it is a part of their service condition. As regards mechanisation, it has reiterated and practically repeated its contentions taken up in the statement of claim which can be summarised and put in a nut shell that the mechanisation carried out by the Bank was far in excess and has resulted in indirect retrenchment and considerable reduction in the staff strength, resulting in loss of jobs. It, therefore, requires to be halted.

31. The Bank's case to state briefly is that the reference was not maintainable on two counts. The first was that the 1970 settlement which was operating between the parties has not been terminated and the second was that the 1979 settlement bars raising of demands now raised. Other contentions of a general kind raised by the Bank were that awards and settlements which hold the field in the banking industry as such and as a whole attempted to bring about standardisation of wages and service conditions of the employees in the banking industry Banks have been classified and that Grindlays Banks stands in Class-A Standardisation of wages and service conditions which apply to employee in A-class banks should be uniform and standardised. No innovation or departure from this pattern should be introduced. The principle applicable while fixing wages and service conditions of employees is industry-cum-region principle. That does not permit deviation or departure or permit each bank to have new and different wage structure and service conditions for a small section of employees when there do not exist any other similar class of industries. If such innovation and new amendments to the wage structure were to be introduced, they will disrupt the principle of region-cum-industry and prejudice industrial peace, which will be a cause or unrest and agitation leading to loss of peace in the industry. There have been majority of workmen in the banking industry represented by large group of banks which do not have any such scheme or grant of additional allowance or lunch allowance. If it were to be introduced, it would mean a departure from the pattern of wage structure and service conditions devised for the banking industry as a whole. These allowances are not allowed and are not admissible to a vast majority of workmen. There is no reason therefore to continue and it will be wrong to revise them for a small section of employees merely because a few concerns, may be in the same region and may be in the same industry, have departed from the norms and introduced a different wage structure and other benefits that would not justify its grant. It is wrong to treat the foreign banks as a distinct class by themselves and introduce additional benefits or wages for the employees of such banks merely because other foreign banks have been doing so. As regards claim for additional allowance. The contended that the additional allowance as contended by the employees was to facilitate the employees in their payment of income tax. Payment of such an allowance is not justified either legally or on any principle This is an indirect demand for wage revision and additional grant of benefit to employees over and above their wage structure. It is, therefore, a wage demand. The contention that wage scales and allowances to the officers cadre and benefits granted to them have been revised from time to time is no consideration or comparison for revision of wage structures and service conditions for banking industry employees who are governed by settlements and awards.

32. Similarly, it was contended by the Bank that the lunch allowance is a similar disguised demand for wage revision. It directly augments the pay packet of an employee and to that extent, is an additional wage. No case has been made out by the employees for increase in the lunch allowance. Since the grant of dearness allowance and revised wages provide the necessary cushion against the rise in cost of living index and since particularly the dearness allowance take care of the rise in the consumer price index, no increase in the prices of commodities would justify an increase in the lunch allowance. In a sense, this would mean grant of an additional and second relief on account of cost of living index to a section of employees over and above the D.A. which is paid to them In the banking industry as a whole, lunch allowance as a rule and generable is not paid. If it is being granted in some banks as a result of settlements either to continue it by an award or to revise it, would be setting up a new trend or precedent which would affect a large number of employees and industry as a whole.

33. With regard to the demand for increasing the canteen subsidy, the Bank pointed out that it provides many other facilities and utilities for the running of canteens. Facilities such as free gas and free utensils, electricity, furniture are also provided which have also to be taken into account. There is no obligation upon the Bank to provide a canteen or provide services in a canteen. The canteen is a welfare measure introduced by the Bank for the benefit of its employees. It is not an obligation upon the Bank and it is not a service condition. Besides, according to the settlements operating between the employees and the Bank, the Bank grants lunch allowance to them. They are also in addition to dearness allowance which is being linked to the cost of living index. That should be and that is according to the Bank, sufficient to take care of any increase in the canteen expenses which may be incurred. Virtually it is a demand on behalf of the employees It is for the servants of the canteen which is run by the employees themselves.

34. As regards the demand for revision of housing loan facilities existing in the Bank, similar contentions were raised that that facility was similarly a welfare measure and not a service condition. It is further contended that if increased loans and to larger number of persons are made available, it will draw away Bank's available funds from other priority areas and national and social projects. It will also diminish the Bank's profits to that extent affecting the workmen. Besides, nobody can be compelled to make loans. The business of the Bank being commercial, loans can be granted only on merits.

35. As regards demand for bonus, the Bank's contention was that this demand for bonus raised on behalf of the employees was not maintainable under the Bonus Act. The Bonus Act is a complete code in itself and that no such demand can be made. It denied that the bonus payable or demanded was not profit bonus or that it was a service condition. It pointed out that the bonus claimed in this case is neither customary or a usage bonus, but only a profit sharing bonus.

36. On the question of mechanisation, the Bank contended that there is considerable scope for further mechanisation. The Bank had been unable to utilise the authorisation granted to it even under 1966 First Bipartite settlement fully because of the obstructictive tactics adopted by the unions. By the 1983 All India settlement between the Indian Banks Association and the All India Bank Employees represented by the Federation and Association, it is permissible to increase the area of mechanisation and extent of it in the banks in accordance with that settlement, Besides, there have been directives from the Reserve Bank to introduce mechanisation. There is considerable technological development in the world in operation in the banking industry. The manner and method of providing and obtaining an up to date position at a moment's notice with regard to affairs of the Bank and customers has revolutionised. In order that the Bank should remain competitive and should continue to operate on a commercial basis and compete with others which introduce such facilities, the Bank must have from to time to mechanise its services and operations and the organisation. Mechanisation, if introduced would ensure spedier services to the customers and to the bank's management to reach decisions in a fast moving world. It would reduce cost and bring about greater efficiency in admistration and rendering of services. Mechanisation would be a considerable asset to the managemetn in organising and managing its banking business and would be a benefit to it from the point of view of information relevant and necessary to make decisions in various matters to deal with customers, handle their transactions and handle the transactions in foreign currency. Whatever benefits which may accure and come from the machanisation of services and organisation can be passed on to the customers and would render customer service cheaper. So far as management is concerned, it will help it to reach and make vital policy decisions as well as business decisions and transactions and enable to organise its business speedily and with greater facility It will also simplify procedures at present adopted and there would be eliminating of errors and scope for committing mistakes to a great extent. Customers need and expect a faster and accurate service and information

37. In this context, the Bank contended that it was already over-staffed. It has not affected any retrenchment. The contention that the Bank has reduced its number of employees according to it, was in the circumstance pointless. There is no obligation upon the bank to maintain the same staff strength when by reorganisation of business and by streamlining and introducing new procedures, the total staff strength can be reduced to bring about economy in operation. It pointed out that there need not be a proportional increase in the staff strength in proportion to the increase or expansion of business and need not have a regulatory or related co-efficient. By bringing about greater efficiency in administration and management, streamlining of procedures for operation, reorganising the business of the bank and introduction of new methods, can lead to economy wrich can also be effected in terms of staff strength. This, according to the Bank, has been effected by it by means of natural exists and not reduction of staff. According to it apparently it keeps only so much staff as is sufficient to efficiently run its business.

38 A summary therefore, of the pleadings of the parties which will facilitate further discussion on the various issues, raised during the course of the trial and arguments would be of advantage. It would also enable concentration on the main points raised which fall for adjudication in this case. The case of the Federation with regard to the additional allowance and lunch allowance to that it has become a condition of the service historically/and by its prevalence through settlements. The additional allowance is not an income tax relief, but is a kind of additional remuneration to the workmen to protect their real wages. So far as the lunch allowance is concerned, it is not linked to DA and has no connection therewith. It was independent and was paid even when there was no dearness allowance paid to the workmen. Both the additional allowance and the lunch allowance are being allowed and stepped up and revised from time to time by the foreign banks operating in India. That it has been allowed and revised in Grindlays' Bank for its officers cadre by way of revision of pay scales and other benefits admissible to them.

39. It is similarly its contention that the housing loan facility is a service condition. With the continued rise in pirces of building materials, housing loan complement which is at present allowed has become too small. The demand is based upon the circumstance that the Bank had expressed its desire to provide housing to its employees, but has not done anything in that direction. Provision of housing for the employees is a part of the service condition, and other banks, both foregin as well as others, have revised this housing loan facilities to its employees since the year 1970 and even earlier. As regards the canteen subsidy, the Federation's contention is that it is not welfare measure, but is also a service condition. It was initially started to meet the gap between the growing canteen staff wages and other benefits and those which are actually prevailing. The Bank has agreed from time to time to revise this and to step in to till the gap and to reduce it. The raise in the canteen expenditure could not be met alone by the rise in foot and product prices. The cost of the service could not be met with these increases. Consequently, this affected both the quality and quantity of the supplies and stuffs. The grant of this facility has been revised in two foreign banks at least, i.e. the Chartered Bank and the Marcantile Bank.

40. The Federation's contention in regard to the claim for bonus is that the bonus asked for is not a profit sharing bonus and is not the one claimable under the Bonus Act. It is a service condition which enables the employees like any other service condition to demand its revision or grant. The settlements which are in operation in the Bank grant bonus without any regard to the actual profits made by the Bank and are not profit related. They are also more than the ceiling permitted under the Bonus Act and is also granted to workmen who were drawing more than Rs. 1600/- as gross salary. The bonus claim has been revised upwards in foreign banks and is being paid therein.

41. With regard to the machanisation, the Federation's contention is that the mechanisation adopted as at present and permissible under the First Bipartite Settlement of 1966 has itself been excessive in extent. There is no justification and scope for its further expansion than what has been already accomplished. Besides, machanisation is subject to conditions in para 6.1 and 6.2 of the 1966 settlement which the Bank has violated by effecting excessive displacement, which has also claused loss of employment and retrenchment by reducing the total staff strength. Correspondingly, there is no benefit from mechanisation either to the employees or to the society in general.

42. The Federation's other contentions on other points can be stated to be that it has duly terminated the settlement of the year 1970 which was in operaion between the Bank and the Federation. That the 1979 settlement entered into between the AIBFA and the Indian Banks Association and the National confederation of the Bank Employees in applicable firstly became the Federation is not a federating unit of the National confederation and is not bound by the settlement which is a Section 2(p) settlement only. The terms of the settlements also on merits do not bar raising of the instant demands. As regards the 1983 settlement relied upon, it is also its contention that that settlement between the IBA and the AIBFA does no blind he Federation as it is not a party to that settlement and is not legally binding upon it.

43. With regard to the other contenions raised by the Bank, the Federation says that there is no such attempt at standardisation of wages and service conditions in the banking industry as such There have been different wage patterns and different service conditions in the industry for individul banks governed by different settlement prevailing between them and their employees. The Shastri Award as well as the

Desai Award merely laid down what is the minimum which must be adopted and given by the bank in the class in which they fall, for the areas of operation as decided by the award. That the foreign banks and Indian banks which are nationalised as also Scheduled Indian banks have improved service conditions over and above those awarded by the Shastri and Desai Award. The Grindlays Bank is the prime bank amongst foreign banks operating in Indian and make high profits. It has undisputed financial capacity. Even less affluent banks than the Grindlays Bank, banks which are smaller in size, whose magnitude of operations is much less than the Grindlays Bank and whose profits are also less in the category of foreign banks, have actually revised the service conditions of their employees from time to time and paid them higher allowances.

4. The Association of Bank employees, which has been impleaded as a party, and has filed its statement of claim, has by and large supported the Federation. It has also, however, pointed out and contended that the 1979 settlements, as well as the 1983 settlements are reasonable and proper settlement. It accepts and adopts them. According to the Association, they do not come in the way of adjudication of this dispute. In substance, therefore, apart from standing by the 1979 and 1983 settlements upon which reliance was placed by the Bank, the Association has gone alongwith the workmen represented by the Federation.

45. The terms of reference can be conveniently set out here at this stage:—

(1) "Whether the demands of the workmen of Grindlays Bank Ltd. for increase in the quantum of existing additional allowance, lunch allowance, canteen subsidy and housing loan are justified? If so, to what extent and from which date ?"

(2) "Whether the demand the workmen of Grindlays Bank Limited for higher quantum of bonus than what has been paid and/or offered by the managemetn for the accounting years commencing in 1976 and onwards is justified ? If so, to what extent and for which accounting years ?"

(3) "Whether there is any scope for further extension of mechanisation in offices and branches of Grindlays Bank Ltd. in India? If so, to what extent and with what conditions, if any?"

46. It will be seen that the issued referred fall into three groups of subjects, which can be conveniently taken up separately. However, as the summary of the contentions set out above in the elaborate pleading referred to will go to show that a preliminary objection has been raised by the Bank with regard to the maintainability of this reference. That preliminary objection is raised in three ways. It is firstly said that the reference is incompetent and the Tribunal has no jurisdication as with regard to the matters raised particularly for increase of additional allowance, lunch allowance, and housing loan, they are covered by a valid settlement of 16th September 1970 which has not been terminated legally by the Federation.

47. The second contention is that the raising of these demands by the Federation is barred in view of the settlement effected on 1st August, 1979 This contention and the other contention referred earlier are somewhat interdependent as I shall presently point out and, lastly, it was contended that th 1983 settlement between the Indian Banks Association and the All India Bank Employees Association comes in the way of adjudication upon these demands. It may be mentioned that of these three pronged attack the one which was seriously pressed was the first contention of non-termination of settlement dated the 16th September, 1970. The last of the contention was more on merits than as preliminary objection

48 The 16th September 1970 settlement is produced by the Bank at Ex-B-11. That settlement covers several matters of which however, we are concerned in the persent case with regard to housing loans, additional allowance and lunch allowance. Thay are coverd in the settlement of 16th September 1970 at items No.2. 4 and 5. The employer Bank's contention therefore was that at least with regard to the claim of revision by the Federation of additional allowance, lunch allowance and the housing loan, which form part of the first group of demands excluding canteen subsidy since there was a valid settlement of 16 September 1970 which has not been properly terminated, the employees and the Federation were not entitled to raise any dispute in regard to the same. As such this Tribunal has no jurisdiction to adjudicate thereupon.

49. Clause 15 of the settlement will go to show that the settlement was to remain in force upto 31st December, 1973 and was to continue to remain in force "thereafter until either party gives to the other notice of termination of this agreement in the manner provided in law." The latter part of this clause is however nothing else but a re-athirmation of what the position in law is under Section 19 of the Industrial Disputes Act. It is, therefore, clear that this settlemen was binding in any case upto 31st December 1973 upon the employees represented by the Federation which is the union in this case and will continue to bind the Federation as well as the Bank unless either of it had terminated it with a notice in writing and after a period of two months from the date of such termination. It is urged for the employer Bank that there is no notice in writing as contemplated either by clause 15 of the agreement or under Section 19 sub-Section 2 of the Industrial Disputes Act terminating the settlement when the reference came to be made on 12th February, 1980. It was therefore urged that at least with regard to the claim for upward revision of additional allowance, lunch allowance and the housing loan, this Tribunal has no jurisdiction as the reference in that behalf would be incompetent as a valid and operating settlement between the parties of 16th September, 1970 had not been validly terminated in accordance with law.

59. Of the two contentions raised as preliminary, I propose to take up this contention first. The answer of the Federation is that the 1970 settlement had been duly terminated. It did not contend that any notice in writing as such, terminating the settlement of 16 September 1970 as contemplated by Section 19(2) specifically informing the Bank that the Federation would not be bound hereafter by the settlement of 16th September 1970 so that with reference to such a letter, the termination of the settlement can be determined was given. It was its contention that the said result has been achieved by other means. It pointed out that no specific form of notice is prescribed under the Act, or the Rules. The object of the notice is to ascertain with certainty, the date on which the settlement ceases to be in force. The termination can also be achieved by means of correspondence and can be spelt out from what has transpired in the letters exchanged for the purpose. It also contended that during the conciliation proceeding and at no earlier stage, before the Government of India decided to make a reference to this National Tribunal, had the bank raised this objection, which it is now raising. The contention, therefore appears to be that the Bank is now estopped from contending that there is no notice terminating the settlement.

51. Coming to the evidence upon which reliance is placed and to which my attention was sought to be drawn by the Bank in order to establish its contention that there is non-compliance with provisions of Section 19 it would be necessary to refer to a number of documents. We might, before that, also refer to the provisions of Section 19 sub-Section 2 usefully. Section 19 deals with period of operation of settlements and awards and sub-Section 2 to it says that "such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement." It was urged for the bank that this period of two months must be ascertainable and clearly ascertained with reference to the written intimation by either party, so as to determine the date when a settlement will cease to be an operative force under Section 19(2). This is necessary with a view to determine whether on the date when the reference was made, whether there was a binding settlement in operation or otherwise.

The contention would have been sound and total at least so far as issue No.1 was concerned. But on the facts which are established in the present case, I am unable to think that before the making of the reference in the present case, there was in operation any valid settlement. In other words, for the reasons, which I shall presently give and from the discussion which follows, I am inclined to take the view that there was a clear notice of termination or that knowledge or intention to terminate the settlement of 16th September 1970, had in substance been given by the Federation to the Bank. That in my opinion is when the letter dated 23rd December, 1974, Ex. F. 17 was addressed by the Federation to the Bank and was received by the management and 2 months thereafter. That was long before the reference in this case came to be made.

52. It seems to me though for the Federation reliance was sought to be placed at one stage on the resolution passed by the Federation on 4th July, 1974 and its communication on the 19th July 1974, that reliance is misplaced. It would be instructive to trace the incidents and events in this context right from July 1974 to 1975 and again in the years 1979 and 1980.

53. The resolution is produced by the Federation at F-3. The relevant portion of that resolution is that the conference of the Federation took note of the 'need for revision of various settlements which have expired and directs the Secretariat to take up the issuses with the management alongwith the issues which still remain unresolved with a view to explore the possibilities of settlement...". The Federation relied upon the resolution alongwith the letter, Ex-F.2 dated 19th July, 1974, with which was forwarded the resolution. The Resolutions which were adopted were sent to the Bank alongwith that forwarding letter. The next letter upon which further reliance was placed, is the communication of 19th July, 1974 and if that was not enough then the one dated 21st October, 1974, Ex-F.4. That refers to a letter of the Bank dated 27th July 1974 and says that on 17th September 1974, a list was handed over to Mr. Bala of the Bank, regarding issues which required improvement. By way of post-script to that letter, it said "the following settlements and or understandings bttween the All India National and Grindlays Bank Employees' Federation and the National and Grindlays Bank Management arrived at from time to time now requiring improvements."

1. xxx
2. Additional Allowance (in lieu of Income Tax).
3. xxxxx
4. Lunch|Transport Allowance.
5. xxxxxxx
6. Canteen Subsidy
7. xxxxxxxxx
8. Various loans:
   (a) Housing Loans
   (b) & (c) xxxxxx
9. & 10. xxxxxx
11. Bonus
12. xxxxxx

54. Mr. Phadnis appearing for the Federation strongly and vehemently contended that even if the resolution did not specify the settlement of 16th September 1970 the resolution clearly said that the federation was seeking revision of all the "expired settlements." According to Mr. Phadnis, the word 'expired' there had it's natural meaning and not the extended meaning contemplated under Section 19(2). His contention was that the parties have voluntarily agreed that the duration of the settlement of 16-9-1970 was was to be upto 31st December 1973 The agreement therefore had expired on 31st December, 1973. It continued to remain in force for purposes of law and as a consequence of Section 19(2) and not by the contract of parties. Therefore, it was his contention that the Federation's resolve to seek a revision of all expired settlements indicated a resolve of the Federation to seek revision of this expired settlement also That according to Mr. Phadnis, is a clear notice of what the Federation is seeking and in substance amounted to termination as required under Section 19(2) of the September 1970 settlement.

55. His further argument was that if this was not enough, then the 19th July letter, and if not then the 21st October 1974 letter was enough notice. The 21st October's letter, amongst others did refer to the settlement regarding additional allowance, lunch allowance, canteen subsidy and bonus, as "settlements requiring revision and improvement."

56. I have already pointed out the terms of Section 19(2). I may in this context also refer to the decisions upon which reliance is placed for the Bank reported in 1973 II LLJ page 283 and 1971 II LLJ page 581. Reliance was particularly placed upon the observation that 'though a written notice can be spelled out of the correspondance there must be a certainty regarding the date on which such a written notice can be construed to have been given because a settlement notwithstanding such notice continues to be in force for a period of two months from that date". The contention therefore, was that unless from the correspondance the intention to terminate the settlement is referrable to any particular date, the settlement continues to bind and it is only when such a date is ascertained, and that too after a period of two months there would be no operative settlement between the parties. It was also pointed out in that case that a service of fresh charter of demands does not amount to notice of termination. There can not be a rider by conduct nor can there by such a determination on conclusion on a representation. There must be an express communication in writing terminating the settlement. The Bank relied upon the decision in Thungabhadra Industries Ltd. and their workmen and another reported in 1973 II LLJ page 283. It was held there in that "Such certainty regarding the date is quite essential because the period of two months after the expiry of which the award ceases to be binding on the parties, will have to be reckoned from the date of such clear intimation regarding the termination of the award." It was also pointed out that the Supreme Court reiterated again the position that "mere making of demands without anything more will not amount to a termination of previous award." It was therefore urged that there must be an express notice in writing intimating the intention to terminate the settlement. Such a compliance in substance from the correspondance and referrable to a particular date so that the terminal point of date of the operation of the settlement can be determined is no doubt permissible. The argument was that no such date can be ascertained or is available either from the correspondance which has passed between the parties or from any express notice in writing. There was admittedly notice in writing terminating the settlement as contemplated under Section 19(2) of the Industrial Disputes Act. The conduct of the Bank in taking part in the conciliation proceedings or taking part in negotiations or even negotiating with the workmen or the employees' raising a new demand for seeking revision of the existing monetary benefits could not amount to and can not be allowed as a dispensation of the legal requirements under Section 19(2). Neither the conduct of the Bank, nor its action can be a substitute for the requisite of a notice. Nor can there be any compliance by conduct. There is no estoppel against the Bank and at no stage had the Bank treated as if the settlement had been terminated.

57. One more contention which was also urged and which needs to be disposed of is the one that relates to the understanding entered between the parties on 4th February, 1980. The terms of that understanding were reduced to writing (Ex-F. 34). The first clause thereof says that the parties "will awit the final decision of the Government of India, Ministry of Labour, on the Failure of Conciliation Report submitted by the Regional Labour Commissioner (Central), Bombay under his letter No. B 7 (69)|79-Con.II dated 7-11-1979." The last clause thereof also says that parties "shall resume bilateral negotiations with regard to the grievances demands of the workmen other than those in respect of the Failure Report referred to in para 1 above has been submitted by the Regional Labour Commissioner (C) Bombay, by 15-3-1980." The failure report dated 7-11-1979 has been produced at Ex-F 29 That will go to show that the Federation's five demands with regard to lunch allowance, additional allowance, canteen subsidy housing loan and bonus were actively debated. The management was unwilling to concede or consider them, and as the sugges-

tions for resolution of the dispute, did not succeed the Failure report was made. It is difficult to see how these terms of understanding in any way operate as a bar. Similarly the settlement of the 1st August 1979 arrived at between the I.B.A. and the A.I.B.E.A. and National Confederation of Bank Employees does not affect the raising of these demands. In clause 9 of this settlement, it is made clear that "the parties, however held bilaterial negotiations and have arrived at a Settlement in respect of scales of pay, Dearness Allowance City Compensatory Allowance House Rent Allowance, Special Allowances, Medical Aid Provident Fund and have further agreed on the modalities of resolving the other demands not settled under this Memorandum of Settlement as also the issues raised on behalf of the said Banks by the Indian Banks' Association." In Clause 10 it is said "the parties have agreed to hold immediate negotations for the resolution of the other demands of the workmen not settled under this Memorandum of Settlement and the issues raised by the said Banks' It is difficult to say that under the 1979 settlement any demands which were not directly negotiated and settled under that settlement were barred or excluded. The understanding between the parties referred to above of 1980 does not also operate as a bar to the hearing of this reference. It may be mentioned that for the Federation, it was contended that the Third Bipartiet Settlement is not binding upon it in as much as the Federation was not an affiliate of the National Confederation of the Bank Employees.

58. Having considered the contentions raised against the documentary evidence adduced in the case to which I shall presently refer, I am unable to accept the contention of the Bank that the Settlement dated 16th September 1970 was not terminated by the union. In order to understand the contention and controversy, it would be useful to refer chronologically to the events which preceded the making of this reference from the agreed expiry date of the settlement of 1970. I have already pointed out that the settlement was agreed to remain in force till 31st December, 1973.

59. The first document to appear on the scene is the Resolution dated 4th July, 1974. That is produced at Ex-F.3, and says that there was a need for "revision of various settlements which have expired". It is quite clear that the resolution does not specify the settlements which according to it, had expired or were in force, but had outlived the period agreed upon between the parties for their being in force. As I have already indicated 'expiry of a settlement and its 'remaining in force' have a technical meaning under the Industrial Disputes Act.

60. For the workmen, it was contended that if the resolution did not indicate by itself that the settlement of 16th September 1970 was terminated, and a notice thereto thus given, the result was achieved by communication of that resolution and the further correspondance which took place between the parties. The resolutions were forwarded by letter dated 19th July. This was followed however, by a letter dated 21st October, 1974, in response to the letter of the management dated 27-7-1974 and further letters from the union in September 1974. The 21st October, 1974 letter is a clarificatory letter and as pointed out above it is in the post script of this letter, that the Federation seeks revision of the settlements and understanding on the subjects including (1) Additional Allowance, (2) Lunch/Transport Allowance (3) Canteen Subsidy, (4) Housing Loan (5) Bonus. It was therefore, urged that a demand for revision was served and it was communicated against the background of the resolutions. This was replied to by the Bank by its letter dated 11th November, 1974. The Bank in this letter made it quite clear that its stand with regard to bonus was that there was no amendment to the Bonus Act and therefore, no change even according to the settlement possible with regard to demand for bonus. Besides, the letter clearly informs the Federation that it is not prepared to consider negotiations anew, firstly because of the attitude idopted by the Federation and secondly, the management was not prepared to consider any further improvement of benefits and concessions which already existed and even those which are available at the national level for the award staff under negotiations with AIBEA. The Bank's letter therefore, was a clear refusal to negotiate and discuss the matter. The letter, however, does not say anything suggesting that it treats the settlement as expired.

61. The most important letter, however is the one dated 23-12-1974 (EX. F. 17). If there was any ambiguity so far with regard to any particular settlement, at least with regard to settlement of 16-9-1970, this letter removes that ambiguity and says "in the circumstances we wish to make it clear that the revision of the settlements stated in our letter dated 19th July, 1974 mainly relate to review of the issues covered in the settlement dated 16th September, 1970 which we intended to treat as expired to cease its operation. The demands proper will be submitted to you later on.' For the workmen, reliance was sought to be placed upon this correspondance exchanged between the parties to which I have so far referred as indicating that in substance, the intention to treat the settlement as expired was communicated. It was contended that the 19th July, 1974 letter, though indirectly, referred to the settlement of 16th September, 1970 and sought its revision. The July resolution had given a mandate to the Secretary to seek revision of the settlements which had expired. Action of the Secretary in forwarding the resolution under letter dated 21st October, 1974 was nothing but in furtherance of the directions of the general body. The Secretary was not acting on his own. The use of the past tense in the resolution was read as with reference to the period of the settlement agreed thereby conveying expiry not only according to the terms of the settlement, as agreed but that the Federation treats it as expired also in the technical sense of the matter. It was, therefore, contended that on the communication of the resolutions, if not on 19th July, at least on 21st October, 1974, the intention of the Federation to treat the settlement as expired in both the senses of the term, that is according to the normal term 'expiry' and also in the extended meaning of the term expiry, it came to an end. It was, therefore, urged that the 16th September, 1970 settlement ceased to be in force two months after 21st of October, 1974, and the letter of the 21st October, 1974 must be construed as an intimation or notice substantially complying with the requirement of Section 19(2) conveying the intention of the Federation which was a party to the settlement to terminate it.

62. It seems to be difficult to accept this contention of the Federation. If the law as laid down requires a clear expression of an intention and communication in writing to treat the settlement as having expired and to terminate it, it is not merely enough to say that a revision of the expired settlement is sought and this was that expired settlement. A settlement may expire where the parties agree at the end of the term which the parties agree that it shall remain in force. That settlement however, in accordance with the legal position continues to bind the parties and remain in force untill it is terminated a notice of termination thereto was given by one of the parties and two months thereafter after such a notice. Therefore, it is not enough to say or described a settlement as "expired". The intention to terminate and the date from which it is intended to be terminated, so that it will cease to remain in force two months thereafter has to be ascertained with precision. That date must be referrable and ascertainable from the correspondance where no express notice in writing exists. The contention on behalf of the Bank is that a general direction to the secretariat is not enough and it is not clear from the resolution as to which of the expired settlements, the Federation wanted a revision. The Secretary could not make his own choice. It was pointed out that there is no specification of the settlements which are ambiguously referred to as 'various'. There is substance in this contention.

63. However, the Bank is not right in contending that the letter dated 23rd December, 1974, also does not serve the purpose. Mr. Vima Dalal, the learned counsel for the Bank contended that what that letter contains is that the Federation "intended to treat as expired to cease its operation". His contention therefore, was that the letter does not serve as a notice of termination so that the period can be counted from 23rd December, 1974. He contended that the past tence used in saying "we intended to treat as expired" would suggest an action already begun or taken. Since such an action was not referable and ascertainable with reference to any particular date prior to December, 1974, his contention was that there is no point of time from which two months period of notice can be counted.

64. I have already pointed out, as has been held by the Supreme Court in Indian Link Chain Manufacturers Limited case (Supra), that an inference of intention to terminate an award could be gathered from the various correspondance, but there must be a certainty with regard to the date. Where a formal notice does not exist, an intention to terminate the award can be gathered from the correspondance where it is ascertainable with reference to a date, as that would be the beginning of the date of notice of intention to terminate. The substantial compliance with the requirements of Section 19(2) and "indication that the previous award has been terminated" as pointed out in Bhungabhadra Industries Ltd. case (Supra) would be enough compliance.

65. It seeks to me that the use of the past tence of verb 'intend' in the letter dated 23rd December, 1974 is only not correct English. It is grammatically incorrect, but factually correct in as much as it was a continuing position and an existing situation which was sought to be informed. If the sentence were to read 'we intend to treat as expired to cease its operation", it would properly and accurately convey not only what was apparently in the mind of the Federation, but what it treated as expired. The letter has not been drafted by a person conversant in law, nor by a solicitor or an advocate. It was written by a union secretary. The inadvertant or incorrect use of the past tense of the verb 'intend' can not thereby be blown out of all proportion to mean as not meaning what it says, but referring to something, or some event, prior to 23rd December, 1974.

66. It seems to me that the letter dated 23rd December, 1974 does convey to the Bank clearly that the Federation has decided to treat the 16th September, 1970 settlement as having expired. The object clearly was to do away with its operation that could only have been done in the context of the provision of 19 sub section 2. The letter, in my opinion serves the purpose of a notice of termination of the settlement of 16th September, 1970, which had already expired and was being treated as having expired, so to end its operation.

67. Alternatively, if it is considered that the past tense was advisedly used, then it might at the most mean that the 23rd December letter clarifies the Federation's intentions as expressed in the letter dated 21st October, 1974 forwarding the resolutions of 4th July. I do not see any difficulty in concluding that if not earlier, the letter dated 23rd December, 1974 clearly conveys to the Bank that the Federation not only treats the 16th September, 1970 settlement as one which is expired by the term of the settlement, but also on account of the intention of the Federation to so terminate it as to decapacitate it, in its operating force. If not, therefore, at any point of time at an earlier date 23rd December, 1974 is the substantive compliance of the intention of the notice of termination or intention to terminate as contemplated under Section 19(2), having been communicated on 23rd December, 1974. Two months after the receipt of this letter the settlement of 16th September, 1970 will cease to have any legal force. The Bank must be deemed to have been served with this intention of termination by the Federation upon receipt. The present reference has been made in 1980. The settlement therefore had expired and had been duly terminated much before the reference came to be made. There is no substance therefore in the contention that the reference is incompetent with regard to these demands of lunch allowance, additional allowance and housing loans as the subsisting settlement providing for these allowances of 16th September 1970 has not been properly and legally terminated. That contention, therefore, must be answered against the Bank and in favour of the workmen.

68. Amongst the terms of the reference and the demands, it would now be better to take up the demand with regard to bonus, demand No. 2. In the view, which I take of this matter, I do not think any elaborate discussion of this demand is called for. I have already indicated the opposing contentions advanced by the parties. For the Federation, it was contended that the demand for bonus is bonus of payment of Bonus Act. Bonus in this bank was a condition of service. It was sought to be historically traced by the workmen not only in the merging units of the bank, but how it was paid before and after the present emergence of the Bank. The devitation from Bonus Act in the manner of payment of bonus without calculations or recourse to the formula of the Bonus Act, or the formula developed by the former Labour Appellate Tribunal, are relied upon as circumstance indicating that bonus payment in this Bank was a condition of service and not a profit sharing bonus. Even after the coming into force on the payment of Bonus Act, it was pointed out, that the Bank did not adhere to the Act and paid bonus in a higher quantum and even to those who were not eligible under the Bonus Act for payment.

69. Reference in this connection was made to the settlement of Bonus Disputes for the years 1956 to 1964 and also after 1965. It was pointed out that the limit of Rs. 750/- as the maximum bonus was crossed in 1968, 1970, 1971 and to raised of Rs. 1,600/-. The settlements for the year 1971-72 and for 1974-75 were a departure from the provisions of the Bonus Act. (P. 41 and 42).

70. It was pointed out that the demand also was for payment of bonus beyond the maximum under the Bonus Act, what was agreed was Rs. 900 for 1971, Rs. 1000 for 1972 and Rs. 1100/- for 1973, while under the payment of Bonus Act, the limit was Rs. 750/- only. As per para 2 of the settlement, extra payment was also agreed to be made for the year 1971-72 to employees drawing salary upto Rs. 9,000, Rs. 9,000-9,675, upto 10,800 and above Rs. 10,800 and upto 11,610 per annum. This it was pointed out was not under the provisions of the Bonus Act.

71. The settlement of 1975 specifically gave up the limit of Rs. 750/- and raised it to Rs. 1,199/- as the maximum bonus. The limit of Rs. 1,600/- for salary per month was also raised to Rs. 2,000/-. This was to be paid irrespective of the revision of the salary. It was therefore urged that the bonus was a service condition in the case of the employees of the Grindlays Bank and was not payable under the payment of Bonus Act, and was not claimed as such.

72. This contention was strongly refuted by the Bank, which pointed out that it was nothing but a profit sharing bonus and the Act covered all cases of profit sharing bonus. This bonus payment was not a service condition. It was not uniform and was not paid continuously even in the years when there was no profit.

73. More important contention raised, however, by the Bank was that this question raised does not survive for consideration and must be answered against the Federation. It was its contention that the Bonus payable in this Bank to the employees was only under the Payment of Bonus Act and any other contention is barred on the principles of resjudicate. It pointed out that a dispute for bonus was raised by the employees of the Bank which had gone right up to the Supreme Court. It was not contended at any stage before the Supreme Court or before the Tribunal in the two references, which were decided by the Tribunal that the Bonus payable was *dehors the Bonus Act and was a condition* of service. In the appeal before the Supreme Court it was held that Bonus Act was applicable and the Court directed calculations to be made on the basis of the provisions of the Payment of Bonus Act, according to which an award came to be made. After that, it was urged, any contention that the Payment of Bonus Act does not apply or that Payment of bonus in this bank was a condition of service can not be agitated. There is considerable substance in this contention. Copies of the judgement in the two reference which were raised in this connection, being reference No. 35 of 1968 and 27 of 1972 were produced. Reference No. 35 of 1968 was later a subject of appeal before the Supreme Court which decision is reported in 1976 I LLJ page 463. The Supreme Court referred to the settlements for the accounting years 1956 to 1964, while the reference in reference No. 35 of 1968 related to the claim and dispute for payment of bonus for the accounting year 1966. The question then raised was regard to the allocable surplus which can only be under the terms of the Payment of Bonus Act. The Supreme Court gave certain directions with regard to calculation of allocable surplus and sent the matter back to the Tribunal. There after allocable surplus was determined by the Tribunal and that was also carried forward. The amount of bonus available for the year 1966 was also determined and it was held that no bonus was payable to the employees as more amount was paid than the admissible 16 per cent or so.

74. For a second time the dispute was again referred to the Tribunal in 1972, vide reference No. 27 of 1972. The first as well as the second reference arose from Calcutta. The

issue referred was "what percentage of the salary is payable as bonus to the employees of the Bank in respect of the accounting year 1967, under Payment of Bonus Act" It was found that 16.59 per cent of salary was payable to the employees as bonus and the amount was directed to be carried forward. Actual payment of bonus apparently was more than this admissible bonus worked out on the basis of the bonus formula.

75. It is, therefore, clear that the dispute was raised for two year by the workmen regarding payment of bonus and it was on both the occasions held, and not disputed, that the Bonus Act was applicable and Bonus amount actually worked out on the basis of the formula prescribed under the payment of Bonus Act. The application of the payment of Bonus Act to the employees recived recognition from the highest Court in this country. It was, therefore, not right for the workmen to say that the Payment of Bonus Act does not apply nor will it be permissible for any Tribunal or any judicial authority to hold that the workmen in this case were not governed by the Payment of Bonus Act.

76. It will, therefore, have to be held that the Payment of Bonus Act applies. Since Payment as permissible under the Payment of Bonus Act is made for the concerned years demand No. 2 does not survive and has to be rejected.

77. Awarded accordingly in part.

R. D. TULPULE, Presiding Officer
[No. L-12025/65/79-DII(A)|D. IV(A)]

नई दिल्ली, 13 मई, 1985

का०आ० 2281—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मैसर्स वाज फारवर्डिंग प्राइवेट लिमिटेड, बम्बई के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं० 1, बम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अप्रैल, 1985 को प्राप्त हुआ था।

New Delhi, the 13th May, 1985

S.O. 2281.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No.1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of M|s. Vaz Forwarding Pvt. Ltd Bombay and their workmen, which was received by the Central Government on the 29th April, 1985.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I AT BOMBAY

PRESENT

Dr. Justice R. D. Tulpule Esqr.,Presiding Officer

REFERENCE NO CGIT-4 OF 1982

PARTIES

Employers in relation to M/s. Vaz Forwarding Private Limited, Bombay.

AND

their workmen.

APPEARANCES

For the management: Mr. Shetty, Advocate

For the workmen : Mr. Udaysingh, Advocate.

INDUSTRY: Posts & Docks

State: Maharashtra

Bombay, dated the 13th day of March, 1985.

AWARD PART—I

The union has filed two applications in this case. One is of 21st February 1985 pointing out certain discrepancies in the balance sheet, and another application is of 12th March, 1985 seeking action under Section 23(2) of the Payment of Bonus Act. The company has replied to these applications by its reply dated 12th March, 1985, refuting some of the allegations and contentions made in the application dated 21st February, 1985.

2. Without going into these allegations and counter allegations at this stage, without prejudice to the contentions think it would be just and proper and in the interests of justice particulary since the employees are seeking clarification of certain expenditure items which have, according to them, risen disproportionately and certain discrepancies in the balance sheet produced before the conciliation officer in May 1982 and the one produced now that the employer company showed submits clarification in regard to the following items, in the balance sheet:—

	Rs. Ps.
(1) Sum charged as welfare expenses	47,263.00
(2) Sum charged as C.I.G.	6,22,779.00
(3) Sum charged as Road Freight	19,69,814.00
(4) Amounts shown as paid to Kale & Prabhu	50,000.00
(5) Amount shown as paid to Gole	32,250.00

3. In view of the conversion of the profit shown in the May balance sheet into loss in the October balance sheet produced in the Court, the Company is also directed to give inspection of its account books with regard to items mentioned above, and supporting vouchers if any in that behalf.

For the purpose of inspection, the union will depute two persons and the inspection will be held at the company's office at D.N. Road from 20th to 23rd March, 1985, both days inclusive, but excluding 22nd March, if it is a holiday, between 11 a.m. to 4 p.m. The company is entitled to depute one of its representative at the time of the inspection and afford reasonable facilities for inspection.

5. If it so desires, the company may furnish the clarifications sought by the union at the time of inspection preferably in writing.

6. The next date of hearing is fixed for 1st of April, 1985.

R. D. TULPULE, Presiding Officer
[No. L-31011/3/82-D. IV(A)]

का०आ० 2282—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएंटल बैंक आफ कोमर्स के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अप्रैल, 1985 को प्राप्त हुआ था।

S.O 2282.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the ward of the Central Government Industrial Tribunal, Chandigarh, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Oriental Bank of Commerce and their workmen, which was received by the Central Government on the 29th April, 1985.

ANNEXURE

BEFORE SHRI I. P. VASISHTH PRESIDING OFFICER CENTRAL GOVT. INDUSTRIAL TRIBUNAL, CHANDIGARH

Case No. I.D. 106/81(Delhi); 128 of 1983 (CHD)

PARTIES :

Employers in relation to the management of Oriental Bank of Commerce.

AND

Their workman : Amarjit Kaur.

APPEARANCES :

For the management : Mr. Shetty, Advocate

For the workman : S|Shri V. S. Malhi and T. C. Sharma.

ACTIVITY : Banking STATE : Punjab

AWARD

Dated the 23rd of April 1985

The Central Government, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the Industrial Disputes Act, 1947, hereinafter referred to as the Act, per their Order No. L-12012|35|81|D. II A, dated the 31st July, 1981 read with S.O. No. S-11025 (2)/83 dated the 8th June 1983 referred the following Industrial Dispute to this Tribunal for adjudication :

"Whether the action of the management of Oriental Bank of Commerce in the matter of transfer of Smt. Amarjit Kaur Sidhu from Sidhwan Khurd Branch in July, 1977 and her subsequent dismissal from service is justified ? If not to what relief is the workman concerned entitled ? "

2. Brief facts of the case, as projected by the petitioner| workman, are that she was in employment of the Respondent Bank on its clerical cadre since 1968 and was posted at Sidhwan Khurd Branch. In 1973 she was offered a promotion posting at Rohtak and again in the year 1975 at Katra Ahluwalia Amritsar but she declined the offer because of her peculiar circumstances. It, however, antognised the Management and they debarred her from promotion for three years w.e.f. 10-3-76. Meanwhile she joined a newly constituted Union of some of her colleagues under the name and style of Oriental Bank Employees Association. It further aggravated their anger because they were supporting the rival Union and therefore they ordered her transfer to Srinagar to which she successfully protested; but after some meaningful pause they passed the impunged order on 15-7-77 transferring her to Katra Ahluwalia Amritsar and relieved her same day even though she was on leave at that time. From her residence the petitione moved several applications supported by the medical certificates for extention of leave but the management behaved unreasonably and always tried to find fault with her medical certificates on one or the other pretext. At least on two occasions i.e. on 17-10-1977 and 2-7-78 she was examined by Govt. Doctors at the Civil Hospital Jagroan.

3. On the other hand the Management insisted that she should submit herself to the check up by the doctors of their own choice; so much so that to humiliate her in the eyes of her neighbours they deputed two of their nominees to examine her neighbours they deputed two of their nominees to examine faulted in the sense that the doctors did not keep up their appointments and made an ex parte report.

4. During all this while the petitioner kept on pouring her complaints against the local authorities to the Asstt. General Manager at Chandigarh but for the reasons better known to him the latter remained unmoved till one fine morning when she was charge sheeted on the ground of in subordination and Sh. P. K. Mehra was appointed as the Enquiry Officer to take departmental action against her. In the consequent inquiry proceedings the petitioner was condemned ex parte and ultimately dismissed from service under order dated 23-11-79.

5. According to the petitioner her transfer to Katra Ahluwalia was malafide and motivated whereas the inquiry was conducted by an unauthorised person in a highly biased and preiudiced manner thus vitiating the dismissal order itself. It was alleged that in taking action against her the Management had flagrantly violated all the norms and principles of natural justice equity and fair play besides the codified terms and conditions of the Bipartite Settlement. She, therefore, raised a demand on the management to ignore the above mentioned orders and to re-instate her with full back wages on her original assignment but they were found unresponsive despite the intervention of the Conciliation machinery; hence the reference.

6. Resisting the proceedings on all counts the Management questioned the validity of the reference on the plea that the Appropriate Govt. did not take stock of the report and the documents filed before the Conciliation Officer; it was further avered that the claim statement filed by one Sh. V. S. Malhi was unauthorised and, otherwise also defective since it was not properly verified. They pleaded that the petitioner should have exhausted the alternative remedy of "Service Appeal" before raising an industrial dispute leading to the instant Reference.

7. Replying on the merits, the Management conceded that the petitioners had been in their service since 1968 and had been offered promotion postings at Rohtak and Katra Ahluwalia Branch on earlier occasions when she declined the same on the plea of some personnals difficulties. It was also admitted that before her ultimate transfer to Katra Ahluwalia Branch under the impugned order dated 15-7-1977 she was ordered to be shifted to Srinagar but the relevant order was recalled in response to her prayer. All the same validity of the impunged transfer order dated 15-7-1977 was asserted on the plea that it was an administrative decision taken with open mind and without any intention to wrong the petitioner. For the obvious reasons allegations of animus were vehemently denied. In the same sequence they alleged that to avoid and flout the transfer orders the petitioner involved them in unnecessarily lengthy and frivolous correspondence. So much so that she refused to submit herself for medical examination even though she kept on herping on some personal ailmenty and since she neither showed any inclination to obey the transfer orders nor agreed to get herself medically checked up by an authorised and independant-doctor they were left with no other alternative to initiate departmental disciplinary proceedings.

8. Similarly the fairness, propriety and the validity of the departmental inquiry was also propounded and the authority of the Enquiry Officer was defended. It was specifically asserted ex parte proceedings were taken against the petitioner only when all the efforts to join her in the Enquiry drew a blank because of her stubbornly non-cooperative attitude.

9. Over and above the terms of reference the parties were taken to trial on the following issues arising from their pleadings :

1. Whether the reference is legally infirm or incompetent as alleged ?

Or

2. Whether the Domestic Inquiry was violative of the principles of natural justice equity and fair play ?

10. I have carefully gone through the entire material on record and heard the parties at length. My issue wise discussion and findings are as follows :

ISSUE NO. 1

11. The management had three fold objection giving rise to this issue i.e. that the Approprite Govt. had not taken stock of the relevant report and documents produced before the Conciliation Officer; that the petitioner had not gone in Service Appeal against her dismissal and that Sh. V. S. Malhi was not authorised to file the claim statement on her behalf which, otherwise also, lacked proper verification.

12. I am not impressed with the effort because it is more or less a matter of conjuctures or guess work to assume that the Appropriate Govt. failed to consider the entire available data or that it had by passed any particular circumstance projected by either of the parties in the Conciliation proceedings. As regards the locus standi of Sh. V. S. Malhi the petitioner's authorisation in his favour in the required form 'F' per Rule 36 framed under the Act is sufficient to clinch the issue whereas any exercise to invoke the techincal rules of pleadings envisaged under the Code of Civil Procedure is thoroughly misconceived. Similarly her calculated or inadvertant failure to go in Service Appeal against the impugned Orders does not cause any dent in the jurisdiction of the Tribunal. Accordingly I answer the issue against the Management.

ISSUE No. 2

13. The petitioner had concentrated her fire against the validity of the Enquiry proceedings alleging that the same were conducted by an unauthorised person who was highly biased against her and that he did not even afford her any worthwhile opportunity to rebut the charges or to project her defence.

14. In the totality of the situation I am not inclined to sustain her grouse. The pertinent point is that the office Circular M9 (also marked Ex. W24) read alongwith the

circular Ex. M8 would leave no manner of doubt that Sh. S. C. Singhal who was the Asstt. General Manager at the relevant time was notified as the Disciplinary Authority whereas Sh. M. K. Vig Chairman of the Bank was appointed as the Appellate Authority in the matters pertaining to the disciplinary proceedings and it has through out been the common ground that Sh. P. K. Mehra was appointed as Inquiry Officer by he afo esaid Sh Singhal per his order dated 23rd of May 1979. On behalf of he petitioner it was argued that by the time of passing these orders Sh. Singhal it had become Deputy General Manager and so he conuld not order the appointment of Sh. P. K. Mehra. I am not impressed with the submission because on promotion to a senior post in the hierarchy Sh. Singhal did not loose his powers which he was enjoying earlier by virtue of his office as the Asstt. General Manager rather the incident of his personal promotion extended the scope of his powers.

15. The next contendion on behalf if the workman was that according to the Bipartite Settlement the name of the Inquiry Officer as well as Disciplinary Authority should have been notified on the notice Board so that the emplovee could be fully aware of the particular person to be approached for the appropriate relief. The argument is without force because on her own admission the petitioner was duly intimated in advance regarding the appointment of Sh P. K. Mehra as Inquiry Officer. Sh. Singhal as the Disciplinary Authority. and also that the Chairman was the Appellate Authority. To be precise, the failure of the Management to put a formal Bill on the Notice Board did not cause her any prejudice.

16. Similarly the complaint that the charge sheet should have been entered in the Enquiry Proceedings Register alongwith her reply, findings of the inquiry Officer and the final order there on by the Disciplinary Authority is also without force because on her own admission in the claim statement she was fully aware of the charges and was in correspondance with the Management regarding their veracity. Significantly enough in her affidavit Ex. W1 as well as cross-examination in witness box she admitted all these features, though she would have us belived that the Inquiry proceedings were void abinitio because she did not get a fair chance to rebute the charges.

17. On her behalf it was argued that she had submitted medical certificates Ex. W42 dated 17-10-1977 and Ex.W38 dated 2-7-78 (issued from the Civil Hospital Jagroan) to the Management in support of her ailment but the inquiry Officer did not properly appreciate their value and rather played to the tune of the management by relying on the ex parte evidence of doctors Subhash Anand and R. Kumar. The submission is devoid of force because in the very nature of things a Tribunal cannot sit in appeal over the findings of an Enquiry Officer recorded in a domestic forum Rather if a given set of circumstances admitts of two equally possible and reasonable interpretations, usually the one drawn by the Enquiry Officer requires to be sustained because he had the added advantage of examining and watching the demeanour of the witnesses.

18. Be that as it may, a bare persual of the medical certificates Ex. W42 and W38 would show that the concerned doctors did not specifically report the intensity of the disease from which the petitioner was suffering, they did not even mention whether she required hospitalization or bed rest or as to whether she was unable to join duty, and if so as for how long she was likely to be kept under treatment It goes without saying that neither of the doctors who issued these certificates faced the acid test of cross-examination by appearing before the Enquiry Officer on the other hand both the doctors Subhash Anand and R Kumar appeared before the Enquiry Officer and made categorical statements on oath that despite their best efforts and timely intimation to the petitioner they could not examine her because she evaded the "check up" either by disappearing from her residence or by putting on a sort of inconvenient and evasive "guards". And it hardly requires any emphasis that the Management also produced all the relevant evidence to show the passing and communication of the transfer orders to her which the petitioner kept on avoiding all this while.

19. To be precise there was more than reasonable qualitative evidence before the Enquiry Officer to conclude that there was a delibrate attempt on the part of the petitioner to avoid the medical test and flout the transfer orders.

20. Moreover a perusal of his proceedings entered in the Register Ex. M/A, whose authenticity was conceded by the petitioner during her cross-examination, and the disclosures made in the Claim-statement itself would give more than sufficient indications that the charge-sheet containing the specific and unambiguous allegations of a willful disobedience of the Transfer orders was served on the petitioner and she even replied by it by controverting the insinuation and entered into a lengthy, though futile, correspondance to contest the departmental proceeding by way of proxy alone. Time and again the Enquiry Officer wrote letters impressing upon her the desirability of joining the proceedings either personally or through any authorised representative, but on one or the other pretex she always avoided the proposition.

21. I thus find no substance in the complaint that there was any impropriety, irregularity or illegality in the conduct of the Enquiry Proceeding. According the issue is answered against the workman.

Terms of Reference and Relief

22. As a necessary corollary to my aforesaid findings on issue No. 2, the Management's action in taking disciplinary proceedings and punishing the petitioner on the charge of disobeying the Transfer order dated 15-7-1977 deserves to be sustained even though the punishment of dismissal appears to be a bit harsh because, after all, the petitioner was a poor lady with family liabilities and had faithfully served them for almost nine years before being involved in the incident giving rise to these proceeding, and during the meanwhile had also forgone her promotion on two distinct occasions on account of some family compulsions. Of course she was ill advised in flouting the Transfer order and altogether boycotting the departmental proceedings but I think that any punishment short of dismissal, could suffice to meet the ends of justice; particularly when she has already been though the grinding mill of a protracted litigation for quite sometime.

23. Accordingly on sustaining the Management's action in its pith and substance, in exercise of the powers under Section 11-A of the Act, I set aside the order of dismissal and in its place impose a punishment of the loss of up to date salary alongwith all the attendant service benefits. To be precise she will be deemed to have been restored to the very position which prevailed on her being relieved from Sidhwan Khurd Branch on 15-7-1977 for Katra Ahluwalia.

24. Award returned accordingly.

Chandigarh 23-4-1985.

Presiding Officer, Central Govt. Industrial Tribunal

[No. 12012/35/81-D. II(A)/D IV(A)]

का०आ० 2283—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, स्टेट बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-85 को प्राप्त हुआ था।

New Delhi, the 13th May, 1985

S.O. 2283.—In pursuance of section 17 of the industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the State Bank of India and their workmen, which was received by the Central Government on the 2nd May, 1985.

ANNEXURE

BEFORE SHRI R. B SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

I.D. No. 16 of 1984

In the matter of dispute between :

Shri Surendra Prasad Sharma C/o Dy. General Sec. State Bank of India, Staff Association 2/368 Nambair Agra.

AND

The Regional Manager, State Bank of India, Lauries Hotel Agra.

Shri S. S. Sharma representative for the management & Shri V. K Gupta representative for the workman.

AWARD

The Central Government Ministry of Labour vide its order No. L-12012|204|82 D-II-A dated 9-6-83 has referred the following dispute for adjudication :

"Whether the action of the management of State Bank of India in relation to its Aligarh City Branch under the control of Regional Manager Region II Agra in terminating the service of Shri Surendra Prasad Sharma Sub-Staff with effect from 31-7-82 is justified? If not to what relief is the workman concerned entitled?

The workman filed statement of claim and the management filed its written statement giving parawise reply. The management also filed documents showing that the workman was appointed as temporary guard for 89 days on specific salary and that the employment was come to an end after the expiry of the aforesaid period. 15 days before terminating of the service by efflux of time the management gave him notice that his services will be terminated at the close of 31st July, 1982.

On the date fixed the parties filed affidavit evidence. the workman representative stated that he had no instruction to proceed with the case Hence it was ordered that the reference be decided as no claim award.

As the workman himself failed to substantiate his claim, the reference is answered in negative holding that the action of the management terminating the services of the workman w.e.f. 31-7-82 is justified and the workman is not entitled to any relief.

I, therefore, give my award accordingly.

R. B. SRIVASTAVA, Presiding Officer

Let six copies of this award be sent to the Government for publication.

R. B. SRIVASTAVA, Presiding Officer

[No. 12012|204|82-D II (A)]

N. K. VERAMA, Desk Officer

नई दिल्ली, 14 मई, 1985

का. आ. 2284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रिजर्व बैंक आफ इंडिया के प्रबंधतंत्र सम्बद्ध नियोजकों और उनके कर्मकारों, के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 बम्बई, के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3.5.85 को प्राप्त हुआ था।

New Delhi, the 14th May, 1985

S.O. 2284.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Bombay, as shown in the Annexure in the industrial dispute between the employers in relation to the Reserve Bank of India and their workmen, which was received by the Central Government on the 3rd May, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT

Shri M. A. Deshpande.
Presiding Officer.

Reference No. CGIT-2|3 of 1985

PARTIES

Employers in relations to the management of Resrve Bank of India, Bombay

AND

Their Workmen

APPEARANCES

For the Employers —: (1) Shri P. K. Mathur, Legal Officer (2) Ch. Sreerama Murty, Dy. Legal Adviser, (3) Shri P. S. Bindra, Asstt. Legal Adviser.

For the Workmen :—Shri L. K. Pande, President, Reserve Bank Workers' Organisation, Bombay

INDUSTRY—Banking STATE —Maharashtra

Bombay, dated the 18th April, 1985

AWARD

(Dictated in the open Court)

By their order No. L-12011|65|83-D.II(A) dated the 28th January, 1985 the following dispute has been referred for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :—

"Whether the action of the management of Reserve Bank of India, Bombay in relation to their Main Branch, Bombay in revising the duty hours of Telephone Operators vide their Office Order No. 49|390 dated 15-2-1983, without complying with the provisions of Section 9A of the Industrial Disputes Act, 1947, is justified ? If not, to what relief are the workmen concerned entitled ?"

2. Although the order of reference speaks of Main Branch, Bombay of Reserve Bank of India, as records goes and the facts stand the dispute is between the Telephone Operators serving in Main Building and the Bank, the Telephone Operators serving in Amar Building which forms part of the main branch having no concern with the same nor what are known as Leave Reserves.

3. The circular dated 15-2-1983 issued by the Manager, Reserve Bank of India led to the present dispute whereby the duty hours of the Telephone Operators were revised reads as follows :—

WEEK DAYS

Early duty 10.15 to 5.30 P.M. Late duty 11.00 to 6.15 p.m. Normal duty 10.45 to 6.00 p.m.—This is inclusive of 45 minutes lunch break.

SATURDAYS

Early duty 10.15 to 1.45 p.m. Late duty 11.00 to 2.30 p.m. Normal duty 10.45 to 2.15 p.m. —With no lunch break.

It was further stated that these duty hours are subject to change as per administrative convenience.

4. It is the contention of the Union who is espousing the cause of these Telephone Operators that this circular was issued without the consent of the Telephone Operators and unilaterally by the management has deprived the Telephone Operators working in the

Main Building of their customary right or usage to work one hour less for early duty and half an hour less for late duty. According to the Union since inception these Telephone Operators in the main Building are working from 10.15 A.M. to 4.30 P.M. for early duty with rest interval and that late duty working hours were from 11.30 A.M. to 6.15 P.M. and thus although the Telephone Operators in other buildings and also the Leave Reserves were putting 6-1|2 hours duty as in the case of other Class III employees excluding 45 minutes of lunch break, the Telephone Operators in the Main Building were enjoying the concession which now has culminated in special usage and it is therefore urged that the withdrawal of the said concession without any notice under Section 9A is in operative and invalid and hence the dispute.

5. The claim has been opposed on two grounds namely firstly it is an individual dispute having never attained the status of industrial dispute and hence cannot be entertained by the Tribunal. Secondly the averment that the Telephone Operators in the Main Building have a right to work for 5-1|2 hours and 6 hours as early duty and late duty as the case may be is not acceptable and that since these Telephone Operators belong to Class III category the duty hours applicable to the said category namely 6-1|2 hours also would be applicable to them and therefore if by the circular they were brought on par with other employees including the Telephone Operators serving in other buildings there should not be any cause for grievance. It is alleged that the earlier arrangement which was allowed to prevail was on account of administrative reason and convenience and now in order to streamline the duty hours the administrative circular in question has been issued.

6. On the above pleading the following issues arise for determination and my finding thereon are:—

ISSUES

FINDINGS

1. Is the present dispute not an industrial dispute ? —It is an industrial dispute.

2. If it is an industrial dispute and when there is an admission on behalf of the managemen that the Telephone Operators attached to Main Building Board were doing 5-1|2 hours duty and 6 hours duty on week days depending on early duty or late duty is not a change in duty hours a change in condition of service ?—Change in condition of service.

3. If it amounts to change in service condition is it not obligatory on the management to follow Section 9A of the I. D. Act before introducing the change ?—It was obligatory.

4. Whether it has been legally introduced ? —No

5. If not to what relief the workmen are entitled?—As per award.

6. What award ? —As per order.

REASONS

7. As already stated the dispute is between the Telephone Operators working in the Main Building and the management which dispute has been espoused by the Union called Organisation which admittedly is not recognised Union. Now having a glance at the litigation it is evident that no individual Telephone Operator is raising the dispute but the Telephone Operators in Main Building as a class have challenged the right of the management to withdraw certain concession which according to terms, they were enjoying from the beginning. No doubt the number of Telephone Operators as against the number of employees in Class III category is far less, nonetheless the fact remains that the Telephone Operators as such are interested in raising the dispute and therefore they have joined to oppose the circular. Under Sec. 2(k) of the Industrial Disputes Act an industrial dispute means any dispute or difference between employers and workmen connected with the employment or non-employment or the terms of employment. Had an individual Telephone Operator raised any dispute certainly it would have been an individual dispute and valid espousal of the cause by a Union having substantial backing would have been necessary. Against this as alreay stated it is not an individual dispute as such but a dispute between the management of Reserve Bank of India and the Telephone Operators as a class howsoever shall the number in relation to the number of employees in the Bank and therefore the absence of proof of substantial backing would not adversely affect the nature of the dispute. In my view therefore when the dispute as such as an industrial dispute as against individual dispute, the objection to the Union espousing the cause would not survive.

8. The facts as already state are not much in dispute. The fact that these Telephone Operators in Main Building were enjoying the benefit of one hour less for early duty and half-an-hour less for late duty stands admitted. It is also in evidence and not disputed by any party that the Telphone Operators in the nearby building though forming part of the Main Building do not enjoy the concession nor those in any other buildings although in the evidence of Smt. Manjrekar, a witness cited by the Union tried to state that the Telephone Operators in Byculla also enjoy the same facility a fact disputed by the management. However, we are not concerned with the Telephone Operators in Byculla Building in view of the order of reference and whatever may be the facts prevailing there, the admitted fact remains that the Telephone Operators in Main Building were enjoying the facility and form the Union's evidence it was atleast since 1960.

9. Nobody disputes that under the various awards, settlements etc. Class III employees are required to put in 6-1|2 hours duty excluding lunch break. Even though such awards were passed and settlements were entered into, the facility enjoyed by the Telephone Operators in the Main Building was still available and never stood withdrawn till the circular in the year 1983. Therefore when we have to consider the case of the Telephone Operators as a Class in the Main Building, neraly because the Class III employees were required to put in 6-1|2 hours duty excluding lunch break, would not be an answer to the claim

and it will have to be ascertained whether this facility has received the status of usage or customary right or concession or privilege so as to attract Schedule IV read with Section 9A of the Industrial Disputes Act. Now Fourth Schedule item relates to hours of work and rest intervals which form of the condition of service but so far as Class III employees are concerned no such change which was sanctioned by awards and settlements. Therefore the duty hours of Class III employees remains unchanged. It is the change in Telephone Operators working hours which led to the present dispute.

10. Now under the same Schedule under item 8 we find withdrawal of any customary concession or privilege or change in usage and under Section 9A if the case falls under the Fourth Schedule then before effecting any change a notice becomes necessary.

11. Under the Reserve Bank of India (Staff) Regulation No. 32 every employee of the Bank shall conform to and obide by the regulations and shall observe, comply with and obey all orders and directions which may from time to time be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be placed. The Telephone Operators are working under the Manager who commands jurisdiction is not disputed. However, despite these commands and mandates under the Regulations, if the Industrial Disputes Act recognises certain rights, then such right would prevail over the obligation under the Regulation and if the act lays down certain procedure for withdrawal of any customary concession or privilege etc., then not the regulation but the Industrial Disputes Act which would govern such procedure. In my view the Regulation is no answer provided the right can be established under the Industrial Disputes Act and as already stated under Section 9A of the Act no employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change without giving to such workman a notice and within 21 days of giving such notice. The proviso prescribes certain exception but it does not govern the present dispute since the change is not effected in pursuance of any settlement or award etc. To say under the Award or settlement the duty hours are 6-1|2 hours for Class III empoyees exclusive of lunch break is one thing and to say that privilege has been withdrawn under the said award or settlement is another thing. The record speaks that while the employees in Class III category in general are required to put in 6-1|2 hours duty without lunch break, these Telephone Operators from the beginning atleast for more than 25 years were enjoying by putting one hour and half-an-hour less work and this arrangement continued without any break and to the knowledge of the management despite the working hours prescribed for other Class III employees. The awards and settlements which have not touched in any manner the right of the Telephone Operators never can be an answer to the demand made by these employees and therefore the case would not fall without the purview of Section 9A. The fact therefore remains that no notice of change has been issued by the management that the management unilaterally probably thinking in terms of regulation issued the circular and from that time onwards withdrew the facility enjoyed by these Telephone Operators.

12. The fact that other Telephone Operators are following the Class III employees in general and putting 6-1|2 hours duty, will be of little use for the Union is making a distinction because the Telephone Operators as a Class working in the Main Building It may be that these posts are interchangeable and transferable. It may be that the Telephne Operators serving in the Main Building may be required to go and work in Amar Building or any other building in Bombay in which case he|she may not be entitled to that concession which was anjoyed till then but the fact that other Telephone Operators are not enjoying the facility, would not be detrogatory in any way to the right of the Telephone Operators in the Main Building provided the right is established.

13. Smt. Manjrekar, one of the Telephone Operators in her evidence stated that since her posting in the Main Buinding from the year 1960 barring the period when she was posted at Byculla Branch she was enjoying the facility of one hour and half-an hour less duty considering early duty and late duty as the case may be. That she was enjoying this facility till the time of circular is not disputed. Against which the management has examined Shri Shetty, Asstt. Accounts Officer who speaks of duty hours of other Class III employees and duty hours of other Telephone Operators serving in other buildings. Nevertheless he admits that the Telephone Operators of early duty hours were doing one hour less duty and those who were attending late duty hours were doing half-an-hour less duty. Since the witness joined the Section in 1980 his knowledge does to that year but there is nothing to disprove the claim made by Smt. Manjrekar that the facility is being enjoyed atleast from the year 1960 that is from the year she started working as a Telephone Operator in the Main Building.

14. I have already referred to the Fourth Schedule, item 8 that a particular right must be held to have ripened in the privilege as contemplated by the said item. It speaks of the withdrawal of any customary concession or privilege or change in usage. Therefore when the management wanted to withdraw the said privilege or concession having achieved the status of customary concession, they must abide by the provision of Section 9A of the Act. It may be that the management required uniformity but whatever may be the intention behind the circular the fact remains that since the change is governed by Section 9A, it has to be introduced by folowing the procedure laid down such as issue of notice and waiting for 21 days which admittedly has not been done in the instant case and therefore the change unilaterally introduced by the circular dated 15-2-1983, cannot take away the right of the Telephone Operators to put in one hour and half-an-hour duty less.

15. It seems that there is a category known as Leave Reserve functioning in the Main Building against the Telephone Operators actually working on the Board. The record shows that these Leave Reserves are required to put in 6-1|2 hours duty exclusive of lunch break in other words in their case they follow in line with other Class III employees and not the Telephone Operators although working in the same building and like other Class III employees have to put in 6-1|2 hours. It is just possible that they do not actually function on Board till the time they are required during the vacancy on account of leave etc. and so put in 6-1|2 hours duty but that would not in any way affect the right or the privilege enjoyed by the regular Telephone Operators working in the Main Building at Bombay. It is the right of these Telephone Operators as a class available to them while working in the said building and it is not the right given to the individual A, B or C. I have already observed if posted outside such a right may not be available but the fact remains that the Telephone Operator who is serving in the Main Building and operating the Board, she|he is entitled to the right till legally withdrawn. The result is that since the change has not been legally introduced there would be a declination that the circular dated 15-2-1983 unilaterally issued by the management without following the procedure under Section 9A cannot deprive the Telephone Operators in the Main Building of their right to work as per the duty hours enjoyed by them till now.

Award accordingly.

Dated : 26-4-85

M. A. DESHPANDE, Presiding Officer.

[No. L-12011|65|83-D.II.A]

का आ. 2285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, नेशनल बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-85 को प्राप्त हुआ था।

S.O. 2285.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Union Bank of India and their workmen, which was received by the Central Government on the 2nd May, 1985.

BEFORE SHRI R. B. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

I.D. No. 8 of 1983

In the matter of dispute between :

Shri Hari Lal, Peon, C|o General Secretary, Union Bank Employees Union U.P. C|o Union Bank of India, Hazarat Ganj, Lucknow.

AND

The Assistant General Manager, Hotel Clarks Awadh, Union Bank of India, Lucknow.

The Central Government, Ministry of Labour vide its order dated 12th October, 1982, No. L-12012|384|81-D.II(A) has referred the following dispute for adjudication.

"Whether the action of the Management of Union Bank of India, in relation to their Chowk Branch, Allahabad in withdrawing payment of Daftry Allowance to Shri Hari Lal, Peon with effect from August, 1978, is justified. If not, to what relief the said workman is entitled ?"

AWARD

The workman Harilal was posted as Daftari in permanent vacancy in the Chowk Branch, Allahabad on the management bank and was drawing daftari allowance. On 10th July, 1978 one Mushtaq Ahmad joined there on transfer and was made daftari in place of the workman and his special allowance of daftari was withdrawn. According to the workman, Mushtaq Ahmed was transferred from Sitapur to Allahabad on his own request and as per promotion policy he was not entitled to any post carrying special allowance for a period of two years. The workman has therefore, claimed the benefits of the special allowance from the date it was withdrawn.

The management tried to show in their written statement that Shri Mushtaq Ahmad having joined bank's services on 9-2-71 was senior to the workman Shri Hari Lal who joined the bank on 2nd September, 1975. They further averred that in view of the agreement of 1975 regarding the promotion policy, the seniority is ascertained on the total service of an employee in the bank meaning thereby that the allowances was rightly withdrawn from the workman. They further stated that another employee Pyare Lal who joined the bank in 1973 was senior to the workman, thus in any eventuality the workman could not have get the allowance and the same was rightly withdrawn. According to the management in July 1978 the mistake about seniority came to the notice and the error was rectified by withdrawing the allowance (special) by Hari Lal and the work was entrusted to senior most person Shri Mushtaq Ali. The management conceads that as Sri Mushtaq Ali had come Allahabad from Sitapur to his own request, he was not entitled to promotion for the post of Daftari for the period of two years from the date of his transfer but the management realised this mistake when two years had already expired and the question of withdrawing higher assignment at this stage did not arise. The management also ascerts that the special pay is given to the workman who works as daftari.

In the rejoinder the workman averred that another person named Pyare Lal was debarred for a period of three years during those days and therefore, he was not elligible for the post of Daftari at Chowk, Branch, Allahabad, and it was on that account that the workman made daftri in June 1976.

The management bank filed affidavit evidence of Shri S.L.Verma who admitted in cross examination that he has no knowledge if Pyare Lal made any objection to the assignment of daftri to workman Harilal. According to him Mushtaq Ali was promoted as daftri in July, 78 which later on amended as July 79. He could not shown any reason why daftri allowance of Shri Hari Lal was withdrawn when Mushtaq Ali was entitled for promotion only after 1981. The workman representative has drawn my attention to the promotion policy of October, 1975 of Union Bank of India Employees Union. According to this promotion agreement Chapter 5 Clause 3-I(b) "The senior most member of the sub-staff will be assigned the duty of daftri provided he can read and write simple English" It is admitted that Harilal was made Daftri at the station till Mushtaq Ali was not there. If Pyare Lal a senior most was there he should have been made daftri and not the workman. The mere fact that the claim of Pyarelal was passed over shows that he was continued to be given the duties of daftri. The workman in his rejoinder has said that Pyarelal was debarred for a period of three years. The management should have filed specific reply that Pyarelal was not so debarred as asserted by the workman. The management has accepted that it was by mistake that Mushtaq Ali was given daftri allowance when he joined the duties though under rules he could not have been appoint as daftri and drawing allowance as he has came to this branch on his own request from Sitapur and was thus debarred for two years.

The workman was therefore, entitled to be continued to his post Daftri and to draw daftri allowance. The workman should not be allowed to suffer for mistake of the management which they relied later. In these circumstances and in view of the admitted facts, discussion and evidence on record, I hold that the action of the management of Union Bank in relation to its Chowk Branch Allahabad in withdrawing the Daftri allowance is not justified. The result is that he will draw daftri allowance from August 1978 onward, till the bar of Mushtaq Ali comes to end.

I, therefore, give my Award accordingly.

Let six copies of this award be sent to the Govt for publication.

R. B. SRIVASTAVA, Presiding Officer

[No. L-12012/384/81-DII(A)]

का. आ. 2286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूनियन बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2.5.85 को प्राप्त हुआ था।

S.O. 2286.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the Union Bank of India and their workman, which was received by the Central Government on the 2nd May, 1985.

BEFORE SHRI R. B. SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT KANPUR.

INDUSTRIAL DISPUTE NO. 41/81

In the matter of dispute between:

Shri Ajai Kumar Gupta C/o Secretary U.P.Bank's Employee's Congress C/o Bank of India, LIC Building, The Mall, Kanpur.

AND

The Zonal Manager, Union Bank of India, Hotel Clarks Awadh Hazrat Ganj, Lucknow.

AWARD

The Central Government Ministry of Labour vide its Order No. L-12012/64/80-D-II-A dated 24th March 1981, has referred the following dispute for adjudication:

> "Whether the action of the management of Union Bank of India in not providing employment to Shri Ajai Kumar Gupta, Clerk on and after 22-9-79 is justified If not, to what relief the workman concerned is entitled?"

It is common ground that the workman concerned applied for the post of clerk in reference to the advertisement released by the management in July/August, 1978. He appeared in the test and was declared successful in the test and interview. He position in the test/order of merit was at serial No. 229 in the panel of 298 candidates. The workman could not be appointed in clear vacancy and meanwhile Banking Service Recruitment Board was constituted by the Government of India in the month of October, 1978. According to the management the Government of India granted the banks special permission of utilising the penal list up to 30th September, 1978. Out of the penal of 298 candidates mentioned above till august 78 only 196 candidates could be absorbed. As the name of the workman was at serial no 229 he could not be absorbed in the back/management. During year 1979 the Zonal Office utilised in the services of the some of the candidates from the said penal for temporary appointments. The workman concerned was given such temporary appointments on 3-5-79 to 19-5-79, 21-5-79 to 5-7-79 and 16-8-79 to 21-9-79. No termination letter was given to the workman and according to the workman, the management violated the provision of sections 25-G & H of the Industrial Dispute Act and also the provisions of the Shastri Award and bipartite settlement 1966 and the termination of the workman is unreasonable, illegal and unjustified. The workman has claimed for reinstatement with full back wages.

On the other hand the management has admitted that no appointment letter was given to the workman specifying the period of work and no termination order was given. It is further admitted that no notice for termination of service was given. The management witness in his affidavit has admitted that during the year 1979, the Zonal Officer, Lucknow utilised the services of the some of the candidates from the merit list in leave vacancy for a period not exceeding 90 days strictly as per directions of the Government of India and in this way the workman concerned was also considered for temporary appointment and was appointed for a total period of 90 days The period of appointment has been mentioned in the appointment letter. According to the management there has been no violation of the any of the provisions of the I.D. Act and the workman was not entitled for the re-instatement and full back wages. According to the workman no doubt he worked for total period of 90 days but it was not in any leave vacancy and the workman worked regularly on a regular post of permanent nature.

The representative for the workman has argued before me that even though the workman was temporary he should have been terminated after giving 14 days notice as required in para 522 of Shastri Award which lays down as follows :

> "Services of any temporary or probationer (meaning thereby temporary) may be terminated after 14 days notice".

Admittedly no such notice was given to the workman. According to para 508 fo Shastri Award which lays down as follows:

> "Temporary employee means who has been appointed for a limited period of work which is of an essentially temporary in nature or who employed temporary as an additional employee in connection with the temporary increase in work of permanent nature".

This shows that the workman worked in the management bank at the worst as temporary employee and he should have been served with a notice of 14 days. Further it is argued in his behalf that his services were terminated in persuance of circular dated 30-6-79 Exhibit W-W/1 which lais down in clause 3 as follows:

> "No temporary hands should be employed for more than period of 90 days and undertaking should be taken from the temporary employee that they have not served in any bank in any other branch in the past".

Thus it is argued that such circular by the central office of the bank is simply a departmental circular and has no force of law and can not do away with the provision of section 25 G and H of the I.D. Act.

It is futher argued that this limit of 90 days is not given in the circular with a view that the persons appointed as temporary may not claim the benefit under the Bipartite settlement of 1966. In para 20-8 of the said settlement it is laid down that a temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed period of three months during which the bank shall make an arrangement to fill up the vacancies permanently.

Para 20.7 of the said settlement also defines temporary employees.

It is not the case of the management that after 21-9-79 there was no work in the bank for the workman. The emphasis that the workman should not be allowe to complete

more the 90 days and it was on that account that the services of the workman were terminated. In the instant case the application of the rule that no tempraty employee should be continued beyond 90 days can not be called to be reasonable or justifiable, those are executive orders and has no force of law. In support of his contention the workman has drawn my attention to the law laid down in Kapoorthala Central Cooperative Bank Versus Presiding officer reported in 1984 LAB page 974 wherein it was observed:

> "Where the services of the workman were terminated on their rendering 230 days service with notional breaks when the work of the workman was satisfactory and others had been recruited in their place, it was in instance of unfair labour practice and in this view when the workmen were held entitled to be reinstatement then the logical consequence was that they should get their full back wages."

The counsel for the management has drawn my attention to Ministry's letter dated 4th September, 1979 exceeding the date by which the penal was extended upto 30th September, 1979 in U.P The workman had worked in the bank prior to 30th September, 1979 and that too for 90 days. Had he been allowed to continued for a couple of days more he would have been entitled to permanent absorption in the management bank. In para 20-8 Bipartite settlement which lays down as follows :

> "Temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed period of 3 months during which the bank shall make permanent arrangement for filling up the vacancies."

If the vacany was there the workman should have been made permanent prior to 30th September 1979 of further extension could have been sought. Abruptlv termination the services of the workman of 90 days wihin 30th September 1979 when the work was stil there in the management bank was unjust and illegal. The workman has also drawn my attention to the ruling Kheda District Central Co-operative Bank Ltd. Vs Bhargava Balvanti Vyas Gujrat High Court 1984. Spl. CA 5519 of 1983 dated 31-1-84 wherein it was held:

> "There is a clear breach of clause 22 of the standing orders which provide for termination of the employment of a permanent employees on presentation by one month's notice or payment of one months wages in lieu of notice since this condition precedent has not been satisfied the termination in void and ineffective and the respondent is deemed to be continued in service and entitled to orders of reinstatement wit full back wages. The lower court were fully justified in ordering so.'

Thus the termination of the temporary i.e. workman in the instant case without notice of 14 days or notice pay is illegal and he is entitled to be reinstated with full back wages.

It has been argued by the representative for the management that mere fact that candidates name appears in the list will not entitle him to be appointed. The point is conceaded that mere impenalment will not give any right but if a workmen is given temporary assignment he has to be terminated according to law otherwise he would be reinstated.

The learned counsel for the management also drew mv attention to the law laid down in Tapan Kumar Versus General Manager Telephones Calcutta wherein it was held that there is no legal plea laying down that the oral appointment is not empoyment and does not create relationship of master and servent Similarly there can not be any assumption that there must always be written contract of service or termination of service must be in writing. The above law is not disputed but crucks of the matter is termination without giving him 14 days notice.

In view of the discussions made above. I hold that the action of the management bank of Union Bank of India in not providing employment to Shri Ajai Kumar Gupta clerk on and after 22-9-79 is not justified and the workman is entitled to be reinstated with full back wages.

I, therefore, give my award accordingly.

Further it is ordered that six copies of this award be sent to the Ministry for Publication.

Dated 19-4-1085

R. B. SRIVASTAVA, Presiding Officer.

[No. L-12012|64|80-D.II(A)]

Dated 19-4-1985

का. आ. 2287.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, लक्ष्मी कामर्शियल बैंक लिमिटेड के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7 मई, 1985 को प्राप्त हुआ था।

S.O. 2287.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Lakshmi Commercial Bank Ltd. and their workmen, which was received by the Central Government on the 7th May, 1985.

ANNEXURE

BEFORE SHRI R B SRIVASTAVA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT KANPUR

ID No. 239|1983

In the matter of dispute between:

Shri Shantrughan Mishra C|o General Secretary, U.P. Bank Employees Union, 165 Sobhatia Bagh, Allahabad.

Workmen

AND

The Branch Manager

Management

Luxmi Commecial Bank Limited Allahabad.

AWARD

The Central Government, Ministry of Labour, vide its order dt. 18-11-1983, number. L-12012(21)|83-DIV(A) has referred the following dispute for adjudication:

> "Whether the action of the management of Lakshmi Commercial Bank Limited, Allahabad in relation to their Allahabad branch in not absorbing ill banks services Shri Shatrughan Mishra, Clerk cum typist and terminating his services in the last week of February, 1983 is justified ? If not to what relief is the workman concerned entitled ?"

The case of the workman is that he was not given any appointment letter. That the dispute full time duty the workman was not paid full wages of the clerical cadre. That he worked in the branch for more than 300 days and was termination without retrenchment notice or compensation hence terminating him viod ab initio. Furthei the bank has not maintained any seniority list. The workman has also averred that it was during the concillation proceedings that the service were terminated and thus Section 33 of the I.D. Act violated.

On the other hand the case of the management is that the workman was engaged as part time on daily wages at the rate of Rs. 15 per day and was required to work at his own convenience for four days in a week as typist at Allahabad branch In support of its contention, the management filed affidavit of Shri Satish Chandra Dhawan and also as many as 4 documents. Dr. Bajpai and Shri Mangal Wadekar appears for the workman both of whom are local persons. But no one appeared on 16-2-85 and 28-2-85 hence notices were ordered to be issued to the parties on 4-3-85 fixing 30-3-85 failing which no claim award shall be given. On 30-3-85 Shri N. C. Sikri appeared for the management alongwith Sri S. C. Bhawan who has given his affidavit but

but non appeared to cross examine the management witness from the side of workman, and the witness testified the documents and affidavit as correct Ext. M-1 to M-4.

The result is that there is no evidence on record to substantiate the contention of the management rather to the evidence rather the evidence is from the negative side that the workman was employed on the basis of daily wages. In the absence of any positive evidence the reference is answered negative holding that the action of the management in not absorbing Shri Shatrughan Mishra in bank's service and terminating his services in the last week of February, 1983 is justified.

The result is that the workman is not entitled to any relief. I, therefore, give my award accordingly.

Let six copies of this award be sent for publication to the Government.

Dated 30-4-85

R. B. SRIVASTAVA, Presiding Officer

[No. L-12012/21/83-D.IV(A)]

नई दिल्ली, 15 मई, 1985

का. आ. 2288—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, यूनियन बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-5-85 को प्राप्त हुआ था।

New Delhi, the 15th May, 1985

S.O. 2288.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure in the industrial dispute between the employers in relation to the Union Bank of India and their workmen, which was received by the Central Government on the 2nd May, 1985.

BEFORE SHRI R. B. SRIVASTAVA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR

Industrial Dispute No. 181 of 83

In the matter of dispute between Shri Bishan Swarup Nigam C/o Assistant General Manager Secretary UPBEU, Kailash Mandir, Kanpur.

AND

The Assistant General Manager, Union Bank of India, Hotel Clarks Awadh, Hazarat Gan, Lucknow.

Shri Satyapal representative—for the management.

Shri Harmangal Prasad representative—for the workman.

AWARD

The Central Government vide its order No. L-12012/50/83-D.II-A dated 28th April, 1983 has referred the following dispute for adjudication :

> 'Whether the action of the management of Union Bank of India, Zonal Office, Lucknow in not providing employment to Shri Bishan Swarup Nigam as clerk on and after 20-7-79 is justified ? If not to what relief the concerned workman is entitled?"

1. It is common ground that the workman concerned applied for the post of clerk in reference to the advertisement released by the bank in July/August, 1978. He appeared in the test and was declared successful in the test and interview. His position in the order of merit was 213 in the penal of 298. Thereafter Banking Service Recruitment Board was constituted by the Government of India in October, 1978. According to the management the Govt. of India granted the banks special permission of utilising the penal list upto 30th September, 1978. Out of the penal of 298 candidates framed in August 78 only 196 candidates could be absorbed. As the name of the workman was at serial no. 213 he could not be absorbed in the bank. During the year 1979 the Lucknow Zonal office utilised the services of the some of the candidates from the said penal for temporary appointment in leave vacancy. The workman concerned was given such temporary appointment on 19-4-79 to 18-5-79, from 19-5-79 to 17-6-79 and from 19-6-79 to 19-7-79. No termination letter was given to the workman. According to the workman he worked against a permanent post for total of 92 days with artificial break of 2 days i.e. 17th and 18th and fresh hands were employed, who are juniors and were allowed to continue. According to the workman, the mangement violated the provisions of section 25-G and 25-H of the I.D. Act, and is violative of provision of Shastri Award and Bipartite settlement which amounts to unfair labour practice, unreasonable illegal and unjustified. The workman has claimed for reinstatement with full back wages.

2. On the other hand the mangement while admitting the tenure of the service of the workman has averred that the workman was temporarily appointed for a total period of 90 days on purely temporary basis in temporary vacancy for a temporary period in connection with temporary nature of work and as such he did not acquire any right or lein to be absorbed in service. As the appointment was temporary and was for a fixed period there was no question of issuing the termination letter. The management further denied that the workman concerned worked against the permanent post and as such is not entitled to reinstatement with full back wages.

3. In the rejoinder the workman averred that his services were continued from 19-6-79 to 15-7-79 without any appointment order or extension letter and his services were terminated from 19-7-79 without any notice. According to the appointment letter his service was continued till 17-6-79 but 17th June was Sunday hence the workman's services were terminated w.e.f 16-6-79 and was again utilised from 19-6-79 by giving an artificial break on Monday i.e. 18-6-79.

4. It is further averred in the rejoinder that on termination of the services of the workman two persons namely Shri A. K. Bajpai and Hemant Kumar Tewari were appointed. The workman has filed two appointment letters Ext. MW-1/1 and Ext. MW-1/2 which relate to period 19-4-79 to 18-5-79 and 19-5-79 to 17-6-79. There is no appointment letter for the period 19-6-79 to 19-7-79. The management has admitted one Ex. M-2 that the workman worked as temporary from 19-6-79 to 19-7-79. According to the workman no appointment letter was issued for the period 19-679 which was abruptly terminated on 19-7-79. The management has also not filed any such appointment letter showing that the appointment given on 19-6-79 was stand terminated on 19-7-79 as in their appointment letter. Para 522 Shastri Award laid down :

> "Services of any other employ other than a permanent employee or probationer (meaning thereby temporary) may be terminated after 14 day's notice".

Admittedly no such notice wa sgiven to the workman. According to the para 5.8 of the Shastri Award temporary employee means an employee who has been appointed for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional employee in connection with temporary increase in work of permanent nature" It is argued on behalf of the workman that the workman's services were terminated in persuance of the circular dated 30-3-79 ext. MW 1/4 which lays down :

> "[n no case should the appointment in temporary capacity be given for period exceeding 90 days with breaks".

In the enclosed list alongwith this letter the name of the workman appears at serial no. 19. This limit of 90 days given in the circular is with a view that persons appointed as temporary may not claim benefit. In para 20.8 of the Bipartite settlement it is laid down that a temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a

period of three month during which the bank shall make arrangement to fill up vacancies permanently".

Para 20.7 of the bipartite settlement also defines the temporary employees and there is slight improvement from the definition of Shastri Award in as much as it includes those workman who is appointed in temporary vacancy caused by the absence of an particular workman. The entire emphasis of the workman representative is that the work done by workman was the work of a permanent nature and as the workman had worked for 92 days and not for 90 days his termination without notice is unfair labour practice. Moreover, junior to him in the list namely Shri A. K. Bajpai whose name appears at serial no. 37 was continued in the service of the management whereas he should have been terminated firstly, on the plea of Last come first go and thus there has been violation of the provision of sec. 25-H of the I.D. Act. In the absence of any justifiable reason the work man who was senior should have been continued and the persons junior to him appointed in temporary capacity should have been terminated. Even in the list alongwith the circular dated 30-3-72 Ext. MW I|4 the name of Shri A. K. Bajpai appears at serial no. 41 whereas the name of the workman was at serial no. 19. Even according to the admission made by the management and counting the number of days from 19-4-79 to 18-5-79, 19-5-79 to 17-6-79, 19.6.79 to 19-7-79 a number of working days comes to 91 days which is more than 90 days. The workman representative has argued that 18-6-79 Monday was an artificial break and if that too is counted the number of working days of the workman comes to 92 days. It is argued that the work of permanent nature was there in the bank for which temporary hands were appointed and as he had worked for more than 90 days in a post of permanent nature for which vacancy was there and as the bank did not make any arrangement to fill up that permanent vacancy he will be deemed to have acquired a permanent status and his previous employment will be taken into account as part of of his probationery period.

5. On the earlier point of Last come first go, the management representative has drawn my attention to the ruling of Workman Sudder Workshop of Jorehaut Tea Co. Ltd, Verssus The Management 1980 Lab page 742 S.C. wherein it was held :

> "The rule is that the employer shall retrench the workman who came last, first popularly know as last come first go of course it is notinflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qulification needed by the employer may be retained even though another who is one up is retrenched. There must be a valid reason for this deviation, and obviously, the burden is on the management to substantiate the special ground for denarture from the rule Absence malafides by itself is no absolution from the rule in sec. 25G. Affirmatively some valid and justifiable grounds must be proved by the management to be exonerated from the last come first go principle."

In the instant case, the rule that no temporary employee should be continued beyond 90 days can not be called to be a reasonable or justifiable ground. Those are executive orders and have no force of law I accordingly hold that the terminaation of the workman disregarding the principle of last come first go and violation 25G is illegal and he on that account entitled to be reinstated from the date of his termination. On the point of notional break as in the instant case not giving him appointment on 18-6-79 would be an instance of unfair labour practice and on that ground he will be deemed to had worked in all 92 days and not for only 91 days. On this point the workman representative drew my attention to the law laid down in Kapoor Thala Central Coopedative Bank Versus Presiding Officer reported in 1984 LAB page 974 wherein it was observed :

> "Where the services of the workman were terminated on their rendering 230 days service with notional breaks when the work of the workman was satisfactory and others had been recruited in their place, it was an instance of unfair labour practice and in this view when the workman were held entitled to be reinstatement then the logical consequence was that they should get their full back wages.

The counsel for the management has drawn my attention to the letter no. F-5/II/78/IR dated 18th October, 78 of Government of India, Ministry of Finance Department of Economic Affairs Banking Division. This letter clarified that the recruitment which are in the pipe line i.e test have been held may continue to be handled by the individual banks. It was however desired by them to take complete recruitment test process before 31st December 1978. However, fresh recruitment was barred without consulting the recruitment board The period for exceeding penal was extended till 31st March, 79 by another letter of the ministry dated 23-1-79. The period was further extended upto 30th June 79 and ultimately for U.P. the date was extended upto 30th September, 1979. If the management bank required person for the permanent nature of job in their bank and wanted to recruit from the exceeding penal it could have been sought the date of extension from the ministry inview of the pressing extending need and not continued when the breaks of appointing persons temporarily for 90 days and then terminating them. If the vacancy was there and juniors were allowed to continue why workman was thrown out and in that case the termination should have been of the junior most.

In the end the workman has referred me the ruling Kheda District Central Cooperative Bank Ltd. Vs. Bhargava Balwantrai Vyas, Gujarat High Court 1984 where in it was held :

> "There is clear breach of Cl.22 of the standing orders which provides for termination of the employment of a permanent employee or probationer by one month's notice or payment of one month's wages in lieu of notice since this condition precedent has not been satisfied the termination is void and ineffective and the respondent is deemed to be continued in service and entitled to orders of reinstatement with full back wages. The lower court were fully justified in ordering so".

Thus the termination of temporary employee without notice is illegal and he is entitled to reinstatemtne with full back wages.

The management witness Shri S. L. Verma has stated that he is not aware if any law of appointment for the period 19-6-79 to 19-7-79. He has further submitted that in June his last working day was 17-6-79 but not 16-6-79. He gave his ignorance when enquired if on 18-6-79 when the workman was out of employment persons at serial no. 229 and 237 namely Shri A. K. Gupta and Shri A. K. Bajpai were working. On the other hand the workman has testified as persons namely in para 6 of the affidavit were employed in the bank after his termination.

In view of the discussion made above believing the testimony of the workman I hold that the action of the management of Union Bank of India in not providing employment to Shri Kishan Swarup Nigam as Clerk on and after 20-7-79 is not justified. His termination being illegal, he is entitled to be reinstated with full back wages. As it has not been shown that he was gainful employed elsewhere during the period.

I, therefore, give my award accordingly.

Let six copies of this award be sent to the government for publication.

Dated : 11-4-1985.

R. B. SRIVASTAVA, Presiding Officer

[No. L-12012/50/83-D.II(A)]

N. K. VERMA, Desk Officer

नई दिल्ली, 14 मई, 1985

का०आ० 2289:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-85 को प्राप्त हुआ था।

New Delhi, the 14th May, 1985

S.O. 2289.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between he employers in relation to the State Bank of India and their warkmen, which was received by the Central Government on the 1st May, 1985.

ANNEXURE

BEFORE JUSTICE SHRI K.K. DUBE, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, JABALPUR(M.P.)

CASE No. CGIT|LC(R) (34) OF 1982.

PARTIES

Employers in relation to the management of State Bank of India, Regional Office, Hamidia Road, Bhopal and their workman, Shri Mohanlal Raikwar, C|o Sh. S. S. Pathak, 9 Vasundara State Bank Housing Colony, Motia Talab, Jahangirabad, Bhopal (M.P.)

APPEARANCES

For workman Shri P. S. Nair Advocate.

For Management Shri G.C. Jain, Advocate.

INDUSTRY : Banking DISTRICT Bhopal (M.P.)

AWARD

Dated : April 24, 1985.

The Central Government in exercise of its powers under Sec. 10 of the Industrial Disputes Act, 1947, referred the following dispute, for adjudication, vide Notification No. L-12012(261)|81-D. II(A) dated 10th May, 1982 :—

"Whether the action of the management of State Bank of India, Local Head Office, Bhopal, in dismissing Shri Mohanlal Raikwar a messenger in Jawar Sub-Office Astha Br. of the State Bank with effect from 27-8-1975 is justified ? If not, to what relief the workman is entitled ?"

2. Sequal to a domestic enquiry Mohanlal Raikwar was dismissed from services. He was charged of committing misconduct as under :—

(1) That you forged the signatures of the account holder Shri Munna Khan on the 1st May 1971 and Shri Gangaram on the 7th May 1971 on the relative withdrawal letters for Rs. 200 and Rs. 600 respectively and wrongfully obtained paym.ents of the said amounts.

(2) That you abetted in perpetration of the aforesaid fraudulent withdrawals of Rs. 200 and Rs. 600 from the Savings Bank Accounts of Shri Munna Khan and Shri Gangaram respectively in collusion with Shri B. K. Unde.

3. At all material times Raikwar was working in the Jawar Sub-office of Astha Branch of the State Bank of India in about the year 1970. This Sub-office was a small one having only three officials. There was one Officer Incharge, Shri Unde, one Cashier Incharge Shri K. R. Khan and the workman, Raikwar, who was working as a Messenger. It cannot be denied that the Messenger was a Class IV officer completely under the control of the Officer incharge and the Cashier and was required to do the duties commanded by the two officers. On May 1,1971 a sum of Rs. 200 was withdrawn from the Savings Bank Account of Munna Khan, Account No. M|16. The said amount was dposited on 26-5-1971. Another amount of Rs.600|- was withdrawn from the account of one Gangaram on 7th May, 1971, The two amounts from the account of Munna Khan and from Gangaram were withdrawn after forging signatures of two accounts holders and the money from cash counter obtained. On a complaint made by the account holders it was found that Mohan Lal Raikwar, workman, had signed the two withdrawal slips and obtained the amount. Raikwar's contention had been that he was asked by Shri Unde to do so and he had signed the withdrawal slips because the officer incharge wanted the amounts. The amount obtained on the withdrawal slips were handed over to Unde. The basic fact that it was Raikwar who had signed the two withdrawal slips and obtained the amount from the Cashier has been admitted by him and he only pleads that he being the servant of the Bank could not refuse the officer-in-charge when he was ordered to do so. He also stated that he had never seen the specimen signatures of the two account holders and the file of the specimen signatunre was with he officer-in-charge. There was therefore no misrepresentation as such and no intention to forge their signatures. He contends that he did not know why the amount was being required by the officer-in-charge he had no business to demand any explanation from the Manager about the directions he was given to execute. It may be stated here that in regard to this incident Unde had been charge-sheeted and he was found guilty and has been dismissed by the Bank for the misconduct.

4. I have gone through the file of the enquiry and I do not think that the proceedings of the enquiry can be seriously challenged by the delinquent workman The two withdrawal slips are there on the record and he admitted before the Enquiry Officer having signed them. Therefore what the Enquiry Officer as well as this Tribunal would be required to consider would be the effect of withdrawing the amounts at the behest of the officer-in-charge. The Enquiry Officer has also come to the conclusion tha. the amount had not been appropriated by Raikwar but had been immediately handed over to Unde. Therefore there is no reason to doubt the contention that it was Unde who had asked Raikwar to withdraw the amounts from the two accounts after signing the two withdrawal slips.

5. The Enquiry Officer found that the delinquent workman cannot be wholly innocent or ignorant. After all having once withdrawn the amount it should have put him on guard when on the second occasion he was asked to do the same thing. He cannot be misled into doing the misconduct for the second time. The Enquiry Officer further came to the conclusion that Raikwar had connived with Unde in

defrauding the Bank. Therefore both the charges were duly proved. They being serious charges merited severe penalty of dismissal.

6. The question to be consider in this case is not whether a criminal offence has been committed but whether a misconduct as imputed against him has been found to have been found to have been committed by Raikwar. Having gone through the records I also came to the conclusion that Raikwar had signed the withdrawal slips at the behest of the officer-in charge and had obtained money from the cash and paid him the amount. That to say the principal offender or the principal person conducting the misconduct was Unde. It cannot be denied that the Messenger would be in some sort of pressure when he is asked to do the impugned work. He cannot at once refuse to do the same unless of course the work is beyond his duties or was a crime. In this case the misconduct had been committed by Unde through the instrumentality of Raikwar. Whether it was by consent or under pressure is another matter. I do not think that it was by his free consent and one has merely to see the circumstance to believe that it was under pressure. Now a Bank employee cannot be heard to complain that he is under pressure of the Manager or officer-in-charge either to forge a document or to do a fraud which directly affected the Bank. Even a Messenger has to know that he is not supposed to do any illegal act for the manager. His services are for the bank and he does not serve as a personnal servant of the officer-in-charge. We have no other evidence of the pressure except that of the delinquent officer and this pressure has also to be inferred by subsequent conduct and the circumstances of the case. But even assuming that there is a pressure the degree of pressure is not such as would exonerate him from the liability of doing the misconduct even at the behest of the principal offender, the officer-in-charge. To hold otherwise would amount to holding that the Manager or the Officer-in-charge can order whatever work they want legal or illegal to be done by the Peons or Messengers. In my opinion, therefore, the first charge is proved against Raikwar that he had forged the two withdrawal slips and wrongfully obtained the amounts from the two accounts.

7 However, as regards the second charge I do not think that this is a case whether we could say that he connived in the fraud. As I stated above he had not willingly done so but had been asked to do so under some pressure. Therefore the benefit of this may be given to him as regards the second charge. The first charge is proved and is serious enough. Though there are extenuating circumstances, the charge is a serious one and would ordinarily merit punishment of dismissal. Looking to the nature of the case that the specimen signatures file was with the Officer-in-charge and that he had asked him to sign the withdrawal slips and pay the amount to him it would meet the ends of justice if he is reinstated without back wages. He shall forfiet all the increments for the years he remained suspended till today. He would also loose all other terminal benefits for this period he remained suspended. There shall be no order as to costs.

The reference is answered accordingly.

Sdl

K. K. DUBE, Presiding Officer

[No. L-12012|261|81-D.II(A)]

नई दिल्ली, 17 मई, 1985

का. आ. 2290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. डी. अब्राहम एंड संस प्राइवेट लिमिटेड के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में माध्यस्थ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29 अप्रैल, 1985 को प्राप्त हुआ था।

New Delhi, the 17th May, 1985

S.O. 2290.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of Arbitrators as shown in the Annexure in the industrial dispute between the employers in relation to the Messrs D. Abraham & Sons Pvt. Ltd. and their workmen, which was received by the Central Government on the 29th April, 1985.

BEFORE S. K. DAS AND S. R. SAMANT, ARBITRATORS

Reference under Section 10A of the

Industrial Disputes Act, 1947

BETWEEN

M/s. D. Abraham & Sons Pvt. Ltd.

AND

Their Workmen represented by the Transport & Dock Workers Union, Bombay.

In the matter of Gratuity payable to Shri T. D. Parab.

APPEARANCES :

Shri M. M. Shah—for the Company.

Shri I. S. Samant—for the Union.

AWARD

This is a reference made to our joint Arbitration under Section 10A of the Industrial Disputes Act, 1947, vide Govt. of India, Ministry of Labour and Rehabilitation, Department of Labour, Order No. I-31013/2/84-D.IV(A) dated 6th March, 1984.

2. The terms of reference o fthe dispute reerred to us are as under :—

"Whether gratuity calculated and paid to Mr. T. D. Parab under the provisions of the payment of Gratuity Act, read with clause 11 of Settlement dated 4th November, 1984 between M|s. D. Abraham & Sons Private Ltd., and the Transport and Dock Workers Union, Bombay, is correct. If not, what amount of gratuity becomes payable to Mr. Parab under the provisions of the Payment of Gratuity Act read with the provisions of the said Settlement dated 4th November, 1981."

3. In pursuance of the notice issued by us, the Union filed its statement of claim along with certain documents on 18-8-1984.

4. Thereafter the Union filed some more documents on 16-10-1984.

5. On 23-8-1984, the Company took time to file its written statement. The Co. however, has not filed any written statement so far.

6. Today, the parties have filed a bipartite settlement (copy enclosed), which we find fair and reasonable. We pass an Award in terms of the said Settlement.

7. The Award is submitted to the Govt. of India as requried by Section 10 A (4) of the Industrial Disputes Act, 1947.

ARBITRATORS

1. S.K. DAS, Ex-Deputy Chairman, Dock Labour Board,
2. S.R. SAMANT.

Bambay,

15th April 1985.

Presently :

Depty Chief Labour Commissioner (Central), New Delhi.

ANNEXURE

BEFORE THE HON'BLE ARBITRATORS SHRI S.K. DAS AND SHRI S.R. SAMANT

(Arbitration under section 10 A of the Industrial Disputes Act, 1947)

BETWEEN

M/s. D. Abraham & Sons Pvt. Ltd., Hague Building, Sprott Road, Ballard Estate, Bombay-400038.

AND

Their Workmen represented by Transport & Dock Workers Union, Bombay

In the matter of dispute of gratuity payable to Shri T.D. Parab under Industrial Disputes Act, 1947.

May it Please the Hon'ble Arbitrators :

The Parties to the above Arbitrators have arrived at a Settlement on the following terms and pray that the Hon'ble Arbitrators may be pleased to make an award in terms thereof.

TERMS OF SETTLEMENT

It is agreed by and between the Partics as Under :

1. That Shri T.D. Parab in addition to the sum of Rs. 11,906.40 (Rupee Eleven Thousand Nine Hundred Six and paise Forty Only) already paid to him against his gratuity by the Company, will be paid a sum of Rs. 7467 (Rupees Seven Thousand Four Hundred Sixty Seven Only) in full and final settlement of all claims of Shri T.D. Parab in respect of the payment of gratuity to Shri T.D. Parab.

2. That payment under Clause I above will be in full and final settlement of his claims for gratuity of whatsoever nature of Shri T.D. Parab against the Company and that the Union|Shri T.D. Parab will not raise any dispute in respect of the employment of Shri T.D. Parab with the employer Company and|or in respect of his dues.

3. That the payment as per Clause I above shall be made to Shri T.D. Parab as soon as the Settlement is filed before the Hon'ble Arbitrators.

4. That this Settlement has been arrived at between the Parties without prejudice to their respective contentions.

SECRETARY

For B. Abraham & Sons Pvt. Ltd.
For Transport & Dock Workers Union,
T. B. PARAB, Workman
SECRETARY

BOMBAY

DATED : 12-4-1985

Witness :

(1) Sd|- (illegible).

(2) Sd|- (illegible).

(3) Sd|- (illegible).

RECEIPT

I, T.D. Parab have received from M/S. D. Abraham & Sons Pvt. Ltd., Hague Building, Sportt Road, Ballard Estate, Bombay-400038, a sum of Rs. 7,467 (Rupees Seven Hhousand Four Hundred Sixty Seven Only) towards my gratuity in respect of the claim regarding the payment of my gratuity in full and final settlement as per Settlement dated 12-4-1985 reached in the Court of Arbitration proceedings before Shri S.K. Das and Shri S.R. Samant.

T.D. PARAB.

DATED : 12-4-1985

S.K. Das and S.R. Samant Arbitrators

[No. L. 31013/2/84-D-IV (A)]

का. आ. 2991—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सिंडीकेट बैंक के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 1-5-85 को प्राप्त हुआ था।

S.O. 2291.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government on the 1st May 1985.

BEFORE JUSTICE SHRI K. K. DUBE, (RETD.), PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT|LC(R)(11)|1983

PARTIES :

Employers in relation to the management of Syndicate Bank, Jabalpur and their workman Shri Om Prakash Dadariya.

APPEARANCES :

For Workman.—Shri R. K. Gupta, Advocate.

For Bank.—Shri P. S. Nair, Advocate.

INDUSTRY : BANK. DISTRICT Jabalpur (M.P.)

AWARD

Dated, April 24th, 1985

The Central Government in exercise of its powers under section 10 of the Industrial Disputes Act vide its notification No. L-12012|165|82-D. II(A) Dated the 26th April, 83 referred the following question for adjudication :—

"Whether the action of the management of the Syndicate Bank in relation to their Lord Ganj Branch, Jabalpur in terminating the services of Shri Om Prakash Dadariya, Adarsh Agent with effect from 10-7-81 is justified ? If not, to what relief is the workman concerned entitled ?".

The workman O. P. Dadariya was appointed as a commission agent to bring small savings amount and deposit. Such agent is known as Adarsh Deposit Collectors. Under this scheme the persons so appointed collect the money on behalf of the constituents of the bank from the houses. It is then brought to the bank and entered in their ledgers. The collecting agents records them in their pass books given for the purpose. For this work the collecting agent is not paid any fixed renumeration but is paid a commission on the deposits secured by him. There is an agreement which governs this contract of services. While he was doing this work, the bank found that it was not in their interest to keep such a commission agent for various reasons. They also found that Dadariya was doing their work in a manner as was detrimental to their interest inasmuch as he was asking the people not to deposit money in the bank directly but that it should be paid to him, with the result that the Bank had unnecessarily to pay commission to him. At this juncture I am not concerned with the reasons for discontinuing his services as the preliminary question that arises for consideration is whether Dadariya could be considered to be a workman within the definition of section 2(s) of the Industrial Disputes Act. For if he is not a workman, the reference made would be incompetent.

The terms and conditions on which he worked are incorporated in Ex. M/1. He was required to secure deposits from the constituents and on the deposits thus secured he would get commission. He was not required to attend the office in the bank building except that he would bring the cash and deposit it there. There were no fixed hours during which he had to work. There was also no liability that he should bring a fixed amount of business. Again this was a type of work which he could do during his leisure hours if he was employed anywhere else. He could continue services with any other employer and the bank was not concerned with that But certainly they were concerned when he became agent of another bank for doing the same type of work. He was not to be guided by anyone in the matter of securing the deposits nor was he subject to any service discipline as is applicable to the regular banking employees. If he wanted to go on leave it was not necessary or him to apply for leave and get it sanctioned. The terms of contract of services were governed by a special contract Ex. M-1 and he was not governed by any service rules of the bank. His name did not appear on the names of the rolls of employees in the bank. I have therefore to consider that in such case whether he could be considered to be a workman under Section 2(s) of the Industrial Disputes Act. It would be seen that he was not directly under the control of any of the bank employees nor could they direct his services to be performed in any particular manner. They had no control over the services to be personally rendered by the workman. Dadariya was required to secure deposits. This was a special type of work which he was required to do. The nature of business was quite independent and would almost amount to a distinct calling as could be placed on par with an insurance agent, or any other person who secure business on commission. There was no right in the bank to supervise his activities. He was not governed by the conduct rules applicable to the bank employees. The bank was interested in the final results and were not interested in how the money deposited was secured. The employment was to continue at the will of the bank and it could not be said that he would continue to do this work till superannuation. There is no question of increment or superannuation in such employment.

From the above it would be seen that there was a contract of services and not a contract of service. It would be like a legal practitioner retained to look after the legal file of the concern. The legal practitioner in such cases was not solely employed for the work of the company but along with his other briefs he had taken up the brief of the concern and it was appropriately a contract of services. In such cases there was no relationship of employer and employee and it would not be said that the person had been employed as a workman by the concern. The evidence in the case clearly establishes this point. I am therefore of the opinion that Dadariya did not act as a workman but a commission agent to bring the deposits. The remedy for termination of contract cannot be therefore adjudicated in these proceedings. It is not a termination of service as is ordinarily understood of a workman. I am therefore of the view that the reference will not be competent.

ORDER

In the view I have taken Dadariya was not a workman. The reference under section 10 of the Industrial Disputes Act is incompetent. There is no question of any relief. There shall be no order as to costs.

K. K. DUBE. Presiding Officer
[No. L-12012|165|82-D. II. (A)]

नई दिल्ली, 7 मई, 1985

का. आ. 2292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय

सरकार, यूनियन बैंक आफ इंडिया के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-85 को प्राप्त हुआ था।

New Delhi, the 7th May, 1985

S.O. 2292.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the Union Bank of India and their workmen, which was received by the Central Government on the 1st May, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case No. CGIT/LC(R)(58)/1978

(Central Government Notification No. L-12012/27/78-D. II. A, dated 24/27th November, 1978)

PARTIES:

Employers in relation to the Management of the Union Bank of India, 31, Bhadbhada Road, T. T. Nagar, Bhopal and their workman Shri S. C. Bhargava.

INDUSTRY : Banking. DISTRICT : Gwalior (MP)

APPEARANCES:

Shri P. N. Bhargava—for the workman.

AWARD

The dispute here stems from the termination of services of S. C. Bhargava, Clerk at Lashkar, Gwalior Branch of the Union Bank of India. The Central Government in exercise of its powers under section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act) referred the following dispute for adjudication :—

"Whether the action of the Management of the Union Bank of India, Bhopal in terminating the services of Shri S. C. Bhargava, Clerk at Lashkar, Gwalior Branch of the Bank with effect from 17th February, 1977 is justified? If not, to what relief the workman concerned is entitled?"

2. The facts which would be necessary for appreciating the case are these. Shri S. C. Bhargava, the workman in the instant case was given a temporary tenure appointment as a Clerk in the services of the Union Bank of India with effect from 28th December, 1972. On the expiry of the tenure with some break, he was again given a temporary appointment with effect from 25th August, 1973. He was placed on the same post and his appointment was temporary. When the period of his appointment expired on 14th September, 1972, he was again appointed for a short term and finally on the expiry of the period, he was appointed on 28th December, 1973. On 29th June, 1974, his services were terminated. The Central Government in exercise of its powers under section 10 of the Industrial Disputes Act referred the dispute pertaining to his termination, for adjudication. The Central Government Industrial Tribunal, Jabalpur, constituted under section 7(A) of the Act, by its Award dated 7th October, 1976 quashed the termination as being in breach of mandatory provisions of section 25(F) of the Act and therefore, void. The Tribunal declared that Bhargava shall be deemed to be in service of the Bank in the same capacity and shall be entitled to all the benefits and emoluments due to him on account of the deemed continuance in service. The order is Annexure M. 1 and I shall have the opportunity to refer this order presently.

3. The Bank now decided to terminate the services of the employee Shri Bhargava and in terms of the Award, treated him in service and calculated his back wages, retrenchment compensation and the pay in lieu of notice. His services were terminated with effect from 17th February, 1977 and Bhargava was paid the arrears of pay amounting to Rs. 15,814.89, retrenchment compensation equivalent of 2 months' pay amounting to Rs. 920.35 and Rs. 483.30 in lieu of one month's notice. The bank also took the requisite steps to inform the Assistant Labour Commissioner, Additional Labour Commissioner and the Central Govt. as provided in section 25(F). Bhargava accepted the back wages under protest claiming that he was a permanent employee and he could not thus be retrenched. It is clear from Ex.M.7 and Ex.M.11 that the amount had been tendered to Bhagava and as far as the Bank was concerner, they appared to have complied with the requirements of section 25-F of the Act as pointed out by the Industrial Tribunal in its Award.

4. Bhargava moved an application under section 33-C (ii) of the Act before the Central Govt. Industrial Tribunal Jabalpur which was registered as labour case No.75 of 1977. Bhargava claimed compensation of back wages as a permanent employee. He tried to attack the retrenchment on the ground that full compensation and pay due to him had not been paid. This application was dismissed by the Tribunal by its order dated 11-7-1977 inter alia on the ground that the Tribunal by its order dated 7-10-1976 had already declared him as a temporary employee and the claim to wages as permanent emloyee was not placed on existing rights. This order of the Tribunal was challenged in a writ petition bearing M.P. No.121 of 1977 before the High Court of Madhya Pradesh at Gwalior Bench. It appears that the Central Govt. had been moved to refer the dispute as regards termination of Bhargava's services under section 10 of the Act. By an order dated 17-6-1978 (Ex M5), the Govt. of India Ministry of Labour refused to refer the case for adjudication to the Industrial Tribunal. In a brief order, it was stated that the Govt. of India did not consider it necessary to refer the dispute in the fresh reference to an Industrial Tribunal because the workman had already raised the issue

of his alleged illegal retrenchment on 7-2-1977 in a writ petition before the M.P. High Court, Gwalior Bench and the matter was sub-judice. By an order No:L:12012|27|78-D-II. A, dated 24|27-11-1978 the Govt. of India, Ministry of Labour referred the present dispute. The writ peition was still pending, but the Central Govt. appears to have referred the dispute for adjudication as it realised that the present dispute would not be covered by the challenge sought to be made in the application under section 33-C(ii) of the Act. The Management have raised a perliminary objection as to the tenability of the present reference contending that the Central Govt. has not passed a speaking order and the Central Govt. had no power to refer the matter for adjudication suo motu without hearing them. But before I do that, I wish to finish with the history of the case.

5. On April 19, 1979, the High Court quashed the order of the Tribunal in the application under section 33-C(ii) of the Act. The High Court directed the Tribunal to determine the amount of compensation payable under the Award to Bhargava. An amount of Rs.62/- was paid during the pendency of the petition by the Bank to the petitioner. This amount was directed to be paid without prejudice to the rights and liabilities of the parties and was to be adjusted by the Tribunal in the amount to be determined by them. According to the Bank, this amount of Rs.62/- is the amount of bonus payable to Bhargava. Since the calculation of bonus takes some time and has to be calculated according to the Bonus Act. it could not be paid at the time of termination. It is easy to see that the bonus was calculated as per the provisions of the Bonus Act and paid accordingly. It could undoubtedly be not paid when the services of Bhrargava were terminated and noting much turns on the deposit of this amount subsequently by the Bank. The High Court while deciding the writ petition observed that the Award dated 7-10-1976 attained finality and that the status of the petitioner was not of a permanent employee as held by the Tribunal, that the doctrine of sub judice precluded the petitioner from reagitating the question of status again and again, and that the action of the management could not be said to be mala fide. However, the High Court pointed out that it was open to the petitioner to have claimed benefits flowing to him from the Award and, therefore, it was necessary to decide the application under section 33(C)(ii) of the Act.

6. It would, therefore, be seen that before this Tribunal there is one application under section 33(C)(ii) under which benefits flowing from the Award have to be calculated and secondly the present reference posing the dispute as quoted in the beginning. The case had been argued before my Predecessors but the Award has not been passed. Before me, several adjurnments were taken. The parties had already filed written arguments. Looking to the chequered history of the case, I directed the parties to argue on the matter again before me. Even on several dates fixed for arguments, it was not possible to conclude the argument because of one reason or the other. Eventually, the bank wanted me to decide the reference application first contending that on the issues decided in the reference, the 33(C)(ii) application pending before the Tribunal will stand disposed of. The High Court had directed that the 33(C)(ii) application should be decided and it was not advisable to decide the reference first as it may technically amount to overeaching the order of the High Court. I am, therefore, deciding these two application together. The contentions raised on behalf of the workman are, first that he had become permanent as he had continued on a permanent post for about 4 years. If he had become permanent, the workman claims that his compensation and wages would be calculated on that basis and he woulld be entitled to receive a greater amount. If he succeeded in his contention, the Bank having not paid the entire emoluments at the time of retrenchment the order of retrenchment was liable to be struck down. Secondly, it was urged that in computing his monthly wages, the Bank has not taken in to consideration the yearly increments. The question that arised for consideration is whether a temporary employee like Bhargava became entitled to increment at all. Thirdly, it was contended that in any case Bhargava having served for 4 years in the bank became eligible like any other employee in the bank, be given the opportunity to qualify himself in the tests conducted by the bank and such opportunity ought to be given to him. The conduct of the bank in continuing him for 4 years indicated that he was usefully serving the bank and denying him this opportunity would be an unfair labour practice calling for redress. These are the main submissions and I would proceed to examine them.

7. It would be necessary to refer to the earlier order of reference as according to the management the findings arrived at in the earlier order hinging on both the parties. By order No. L. 12012|114|75.D.II|A dated 22-10-1976, the Central Govt. had referred the following question for adjudication:-

> "Whether the Management of the Union Bank of India Lashkar Gwalior Branch is justified in terminating the services of Shri S.C. Bhargava, Clerk and requesting him to appear for interview and test for appointment as Clerk particularly keeping in view the length of his services ? If not, to what relief is the said workman entitled."

The Tribunal by an award dated 7-10-1976 held that Bhargava had been posted on tempoary posts and his appointment was covered under paragraph 20.7 of the Bipartite Settlement dated 19-10-1966. It was observed that Bhargava had accepted fresh appointment every time against the temporary vacancy for a limited term when the earlier term expired. Bhargava having accepted the benefits accruing to him under the orders appointing him as temporary clerk, could not turn down and contend that his appointment were against permanent vacancies and that he had become a permanent incumbent. The Tribunal further observed that a selection by the Board was an essential prerequisite for a permanent appointment under the Bipartite settlement. In case there was a selection by the Board of an existing temporary workman, it was not necessary to confer to him the status of a probationer and he got the benefit under para 20.8 of the same Settlement. This facility of concession would not be available to a person who was not selected by the Board. These were rules framed for governing the selection by competition conducted by a Board which were introduced for avoiding

mal-practices which could lead to favouritism. Then it was found that repeated offers were made to Bhargava for qualifying himself for the banking services, but Bhargava declined to accept the offers and there was no question of selecting him again. Bhargava had rejected bonafide offers made by the bank to qualify himself and thus become eligible for banking service. The Tribunal also found that Bhargava had served continuously in the Bank over a long period and before termination he had undoubtedly served for more than 240 days, there was, however, a non-compliance of the requirements of section 25-F of the Act and therefore the order of terminating his services was void

8. The Union on behalf of the workman required the Bank to produce documents to substantiate their stand that Bhargava was on a temporary post which was being continued from time to time and that he had not been posted on a permanent post. No such documents were produced by the Bank. According to the workman, he had been appointed on a permanent post when one of their permanent employee Mr. Algiwala had left the services. The Bank strangely relied on the finding of the Tribunal in the earlier Award that Bhargava was not appointed on a permanent post but on a temporary post which was continued from time to time. Under paragraph 20.7 and 20.8 of the Bipartite Agreement, the temporary appointments are made. These may be reproduced.

> "Paragraph 20.7.—In supersession of paragraph 21.20 and sub-clause (C) of paragraph 23.15 of the Desai Award, "Temporary Employee" will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes a workman other than a permanent workman who is appointed in a temporary vacancy caused by the absence of a particular permanent workman.
>
> Paragraph 20.8.—A temporary workman may also be appointed to file permanent vacancy provided that such temporary appointment shall not exceed a period of three months during which the bank shall make arrangements for filling up the vacancy permanently. It such a temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment will be taken into account as part of his probationary period".

If Bhargava's case falls under paragraph 20.7 of the Bipartite agreement, then undoubtedly he cannot acquire the status of a permanent employee automatically, no matter he had served the Bank for four years. Paragraph 20.7 envisages appointments on temporary posts or when there is a temporary increase in the nature of work which is of a permanent nature. Paragraph 20.8 deals with a situation when a temporary appointment is made on a permanent vacancy. Under this paragraph it is enjoined that such appointments shall not exceed more than 3 months. During this period of 3 months, or so, the bank is required to fill the permanent vacancy and if the temporary incumbent is selected, the service already rendered by him shall be taken into account as part of his probationary period. Under this paragraph, it cannot be contended that if the person appointed temporarily on a permanent post is continued for more than 3 months, he becomes permanent. Since there is a probation for such an appointment, if there is a fresh appointment or even if the same employee is continued, such appointments or such continuance on the post will not be under paragraph 20.8 and would naturally be governed by the contract of services subsisting between the master and servant. The letters of appointment generally indicate the nature of the contarct In case of Bhargava, these contracts are clear that he would have no claim to a permanent post even if he is continued for more than 3 months. Therefore, even if there is no evidence to show whether his appointment was on a temporary post or a permanent post, Bhargava could not get any benefit and could not claim to have acquired the status of a permanent servant we are dealing with the terms of Settlement, it cannot be conceived that they are exhaustive but are merely enumerative. If any thing falls outside these conditions and terms, it would certainly be governed by the law of master and servant or other statutory law in force and nothing has been shown as would persuade me to hold that Bhargava acquire the status of a permanent servant automatically by merely continuing in servce for 4 years.

9. According to paragraph 508 of the Shastry Award, a probationer means an employee who is provisionally employed to fill a permanent post or vacancy and has not been made permanent or confirmed in service. Permanent employee has been defined as an employee who has been appointed as such by the Bank. It was contended on the basis of the definition of probationer that he was provisionally employed to fill a permanent vacancy or post and he had not been made permanent or confirmed. It is urged that he is not a temporary employee but a probationer and maximum of period of probation under the Bipartite Settlement is 6 months or 9 months. Once the employee has served for 9 months and he has not been removed, he becomes a permanent servant. There would be many difficulties in the way of such an argument. First the Bipartite Settlement is in supersession of all other agreements which means the definition relied on is also superseded as it has not been adopted in the Bipartite agreement. Secondly, as held by my predecessor, in the earlier order, there seems to be some justification in holding that the probationer is selected after due tests and is a qualified person. The bank is the statutory body and works within a certain framework of rules. An attempt is made by these rules to take away the discertion of the management in the respective matters. If the rules require that the employee should posses certain qualifications and pass certain tests and should be selected, this provision has to be given effect to and cannot be circumvented by taking shelter under the misconstruction of the terms of Settlement. Paragraph 20.8 of the Settlement itself envisages the selection of an employee on a permanent post. Even otherwise, the definition of probationer would show that he is an employee selected for a permanent post but kept on provisionally till he is confirmed. Therefore, all the incidences as to the selection and eligibilty necessary for a permanent incumbent would apply to such a probationer. In my opinion it cannot be held that Bhargava had become a probationer because under paragraph 20.8 a class of temporary employee is contemplated who are appointed to fill a permanent vacancy but they are not probationers. At best Bhargava remains in this category of employees appointed under paragraph 20.8. The question then arises whether Bhargava had been paid full compensation at the time of retrenchment ? The Bank had paid him the salary for the period he was deemed to be in employment under the orders of the earlier Award made by this Tribunal. Bhargava's contention is that he had not been paid atleast the two amounts, first the annual increments he was entitled to receive and secondly the bonus amount which the bank employees received at the time of retrenchment and that the same would vitiate the retrenchment as the Bank had not complied with all the conditions of section 25-F of the Industrial Disputes Act.

Under the scheme of recruitment as found in the Sastry Award and the Bipartite Agreement, a temporary employee is appointed for a short duration. It is not contemplated that his period of appointment would run for more than an year or for a longer period. Therefore, no provision is made for annual increments to a temporary employee. Under Paragraph 20.8 if an employee is continued for more than an year it does not follow that he would receive the usual increments payable to a permanent employee. As already discussed, his terms, when he is continued for more than six months, are governed by the contract of employment and the contract of employment does not provide for any annual increment in the salary. It is clear from the scheme of the recruitment that no such increments are contemplated in respect of temporary employees. Bhargava was, therefore, not entitled to any increment even though he had continued in service for more than four years under the Award. The Award also does not mention about the annual increments.

Then comes the question of bonus. Now bonus was payable only after certain calculations were made and the balance sheet etc was prepared. It is in respect of the past years. The actual amount to be paid is determined very much later in the subsequent years after calculating the profits made by the Bank. The Bank as soon as these figures were available, had made payment of bonus to Mr. Bhargava. The High Court had ordered that such payment may be

tentatively adjusted towards the amount payable to Bhargava without prejudice to the right of the parties. Since no bonus amount was payable when Bhargava had been retrenched, it cannot be paid that the entire amount due to Bhargava was not paid when he had been retrenched. There is no substance in these contentions.

Lastly, as regards the question of the Bank giving him an opportunity of appearing for selection for absorptions as a permanent employee, Bhargava had already been given these opportunities and he is to thank himself for not availing these opportunities. I do not think the Bank can be blamed for not giving the opportunities earlier.

ORDER

I, therefore, render this Award by saying that no amount remains due to Bhargava either by way of annual increments or bonus payable to him for the years he was deemed to be in employment. The retrenchment order of the Bank was effective. The vacancies have been duly filled up by the Bank by selection of candidate and absorbing them on permanent basis. Bhargava cannot be deemed to have become permanent in the Bank merely because he was deemed to have been in employment for more than four years. He is not entitled to any relief. In the peculiar circumstances of the case, there shall be no order as to costs.

Sd/-
Presiding Officer

Dated :—23-4-85

[No. L-12012/27/78-D. II(A)]

N. K. VERMA, Desk Officer

नई दिल्ली, 9 मई, 1985

का०आ० 2293 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजमेंट आफ एयर इंडिया के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25 अप्रैल, 1985 को प्राप्त हुआ था।

New Delhi, the 9th May, 1985

S.O. 2293.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Air India and their workmen, which was received by the Central Government on the 25th April, 1985.

ANNEXURE

BEFORE SHRI O. P. SINGLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 127/80

In the matter of dispute between :

Shri Bhim Dutt S/o late Shri Ram Dutt, R/o D-541, Kidwai Nagar East, New Delhi-110023.

Versus

Air India.

APPEARANCES :

Shri N. K. Suri—for the Management.

Workman—in person with Shri Ashok.

AWARD

The Central Government, Ministry of Labour on 17-11-80 vide Order No. L-11012(3)/79-D.II(B) made reference of the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Air India Northern India Region, New Delhi in terminating the services of Shri Bhim Dutt, ex-Driver with effect from 13th July, 1978, is legal and justified? If not, to what relief the workman is entitled?"

2. Today the workman accepted Payee Account Cheque No. JP-0530349 dated 27-3-85 on current account No. 1031 for Rs. 10,000 from Air India in full satisfaction of his claim and gave up all other claims for reinstatement backwages or every other claim against Air India including gratuity notice-pay, leave-pay, provident fund etc. and requested that a No Dispute award may be made.

3. Under the circumstances of the case I consider the settlement by the workman with the Management to be free and fair and accept the same and No Dispute Award is made.

Further it is ordered that the requisite number of copies of this Award may be forwarded to the Central Government for necessary action at their end.

April 20, 1985.

O. P. SINGLA, Presiding Officer

[No. L-11012(3)/79-D.II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 15 मई, 1985

का. आ. 2294—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेहरी रोहतास लाइट रेलवे कंपनी लिमिटेड डालमियानगर के प्रबंधतंत्र से सम्बद्ध नियोजकों और और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3 मई, 1985 को प्राप्त हुआ था।

New Delhi, the 15th May, 1985

S.O.2294.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Dhanbad, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Dehri Rohtas Light Railway Company Limited, Dalmianagar, and their workmen, which was received by the Central Government on the 3rd May, 1985.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 12 of 1985

In the matter of Industrial Disputes under Section 10(1)(d) of the I.D. Act., 1947.

PARTIES :

Employers in relation to the management of Dehri Rohtas Light Rly. Co. Ltd., Dalmianagar, and their workman.

APPEARANCES :

On behalf of the employers—None.

On behalf of the workmen—None.

STATE : Bihar. INDUSTRY : Light Railway.

Dhanbad, dated, the 27th April, 1985

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the folowing dispute to this Tribunal for adjudication under Order No. L-41011(31)/84-D.II(B), dated, the 5th Feb., 1985.

SCHEDULE

"Whether the action of the management of Dehri Rohtas Light Railway Co. Ltd., P.O. Dalmianagar Dist. Rohtas to lay off the workmen with effect from 11-7-84 is justified ? If not, to what relief the workmen are entitled ?"

The reference was received by this Tribunal on 8-2-85. The union which had raised the dispute did not file the statement of claim, with relevant documents, list of reliance & witnesses with the Tribunal within 15 days of the receipt of the order of reference and also did not forward any copy of the same to the opposite party involved in this dispute. A notice was also issued to the union concerned and thereafter three adjournments were granted but the union did not turn up nor took any step.

It is for the sponsoring union to file the statement of claim, etc. within 15 days of the receipt of the order of reference. But the Tribunal even took special care to give them notice to comply with the provisions of law in time as the amended rules are new. As the union is taking no step and has not even cared to file the statement of claim etc., it appears that they have no case and as such the statement of claim, etc. have not been filed by them.

In view of the above, I held that the action of the management of Dehri Rohtas Light Railway Co. Ltd., P.O. Dalmianagar, Distt. Rohtas to lay off the workmen with effect from 11-7-80 is justified. Consequently the concerned workmen are entitled to no relief.

I. N. SINHA, Presiding Officer.

[No.L-41011(31)|84-D.II(B)]

का. आ. 2295.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेहरी रोहतास लाइट रेलवे कंपनी लिमिटेड डालमियानगर के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3 मई 1985 को प्राप्त हुआ था।

S.O. 2295.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dehri Rohtas Light Railway Company Limited, Dalmianagar and their workmen, which was received by the Central Government on the 3rd May, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri I. N. Sinha, Presiding Officer.

Reference No. 11 of 1985

In the matter of Industrial Disputes under Section (10)-(1)(d) of the I.D. Act, 1947.

PARTIES :

Employers in relation to the management of Dehri Rohtas Light Rly Co. Ltd., Dalmianagar, and their workmen.

APPEARANCES :

On behalf of the employers—None.

On behalf of the workmen—None.

STATE : Bihar. INDUSTRY : Light Railway.

Dhanbad, Dated the 27th April, 1985

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-41011(42)|84-D.II(B) dated the 5th Feb., 1985.

SCHEDULE

"Whether the demand of the workmen of Dehri Rohtas Light Railway Company Limited, P.O. Dalmianagar Rohtas except the workmen of the workshop of the Company for wages for the period of lay off w.e.f. 9-12-83 to 14-2-84 is justified ? If so, to what relief the workman are entitled ?"

The reference was received by this Tribunal on 8-2-85. The union which had raised the dispute did not file the statement of claim, with relevant documents list of reliance and witnesses with the Tribunal within 15 days of the receipt of the order of reference and also did not forward any copy of the same to the opposite party involved in this dispute. A notice was also issued to the union concerned and thereafter three adjournments were granted but the union did not turn up nor took any step.

It is for the sponsoring union to file the statement of claim, etc. within 15 days of the receipt of the order of reference. But the Tribunal took special care to give them notice to comply with the provisions of law in time as the amended rules are new. As the union is taking no step and has not even cared to file the statement of claim, etc. it appears that they have no case and as such the statement of claim, etc., have not been filed by them.

In view of the above, I held that the demand of the workmen of Dehri Rohtas Light Railway Company Limited, P.O. Dalmianagar Rohtas except the workmen of the workshop of the Company for wages for the period of lay off with effect from 9-12-83 to 14-2-84 is not justified. Consequently the concerned workmen are entitled to no relief.

I.N. SINHA, Presiding Officer.

[No. L-41011(42)|84-D.II(B)]

का. आ. 2296.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेहरी रोहतास लाइट रेलवे कंपनी लिमिटेड, डालमियानगर के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 धनबाद के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 3 मई, 1985 को प्राप्त हुआ था।

S.O. 2296.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, No. 2, Dhanbad, as shown in the Annexure in the industrial dispute between the employers in relation to the management of Delhi Rohtas Light Railway Company Limited, Dalmianagar, and their workmen, which was received by the Central Government on the 3rd May, 1985.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2) AT DHANBAD.

PRESENT :

Shri I. N. Sinha,

Presiding Officer.

Reference no. 13 of 1985

In the matter of Industrial Disputes under Section 10(1) (d) of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of Dehri Rohtas Light Railway Co. Ltd. Dalmianagar and their workmen.

APPEARANCES :

On behalf of the employers—None

On behalf of the workmen—None

STATE : Bihar. INDUSTRY : Light Railway.

Dhanbad, the 27th April, 1985

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-41011(41)|84-D.II(B), dated, the 5th February, 1985.

SCHEDULE

"Whether the demand of the workman of the working of Dehri Rohtas Light Rly. Co. Ltd. for wages for the period of Lockout with effect from 8-12-83 to 14-2-84 is justified ? If so, to what relief the workmen are entitled ?"

The referrence was received by this Tribunal on 8-2-85. The union which had raised the dispute did not file the statement of claim, with relevant documents, list of reliance and witnesses with the Tribunal within 15 days of the receipt of the order of reference and also did not forward any copy of the same to the opposite party involved in this dispute. A notice was also issued to the union concerned and thereafter three adjournments were granted but the union did not turn up nor took any step.

It is for the sponsoring union to file the statement of claim, etc. within 15 days of the receipt of the order of reference. But the Tribunal took special care to give them notice to comply with the provisions of law in time as the amended rules are new. As the union is taking no step and has not even cared to file the statement of claim, etc. it appears that they have no case and as such the statement of claim, etc. have not been filed by them.

In view of the above I hold that the demand of the workmen of the workshop of Dehri Rohtas Light Rly. CO. Ltd. for wages for the period of Lockout with effect from 8-12-83 to 14-2-84 is not justified. Consequently, the concerned workmen are entitled to no relief.

I. N. SINHA, Presiding Officer
[No. L-41011(41)|84-D.II(B)]

नई दिल्ली, 15 मई, 1985

का. आ 2297 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेहरी रोहतास लाइट रेलवे कंपनी लिमिटेड डालमियानगर के प्रबंधतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3 मई 1985 को प्राप्त हुआ था।

S.O. 2297.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dehri Rohtas Light Railway Company Limited, Dalmianagar and their workmen, which was received by the Central Government on the 3rd May, 1985.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO 2) AT DHANBAD

PRESENT

Shri I. N. Sinha,

Presiding Officer.

Reference no. 10 of 1985

In the matter of Industrial Disputes under Section 10(1)(d) of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of Dehri Rohtas Light Rly. Co. Ltd., Dalmianagar and their workmen.

APPEARANCES :

On behalf of the employers—None.

One behalf of the workmen—None.

STATE : Bihar INDUSTRY : Light Railway.

Dhanbad, the 27th April, 1985

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-41012(30)|84-D.II (B) dated the 5th February 1985.

SCHEDULE

"Whether the action of the management to deny promotion to Shri Ram Suresh Singh, Peon working in general office of M|s. Dehri Rohtas Light Railway Co. Ltd., at Dalmianagar to the post of clerk as per the mutual settlement is justified ? If not, to what relief is the workman entitled ?"

The reference was received by this Tribunal on 8-2-85. The union which had raised the dispute did not file the statement of claim, with relevant documents, list of reliance and witnesses with the Tribunal within 15 days of the receipt of the order of reference and also did not forward any copy of the same to the opposite party involved in this dispute. A notice was also issued by this Tribunal to the union concerned and thereafter three adjournments were granted but the union did not turn up nor took any step.

It is for the sponsoring union to file the statement of claim, etc. within 15 days of the receipt of the order of reference. But the Tribunal took special care to give them notice to comply with the provisions of law in time as the amended rules are new. As the union is taking no step and has not even cared to file the statement of claim, etc. it appears that they have no case and as such the statement of claim, etc. have not been filed by them.

In view of the above, I hold that the action of the management to deny promotion to Shri Ram Suresh Singh, Peon working ingeneral office of M|s. Dehri Rohtas Light Railway Co. Ltd., at Dalmianagar to the post of clerk as per the mutual settlement is justified. Consequently, the concerned workman is not entitled to any relief.

I. N. SINHA, Presiding Officer

[No. L-41012(30)|84-D.II (B)]

HARI SINGH, Desk Officer

नई दिल्ली, 17 मई, 1985

का. आ. 2298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स अनुपचन्द जैन और मैसर्ज नेमी चन्द जैन, बोकारो स्टील लि. के. ठेकेदार के प्रबंधपत्र से सम्बद्ध नियोजकों और उसके कर्मकारों के बीच अनुबंध में विनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30 अप्रैल, 1985 को प्राप्त हुआ था।

New Delhi, the 17th May, 1985

S.O. 2298.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Messrs. Anoopchand Jain & Messrs. Nemi Chand Jain, Contractors of Bokaro Steel Limited and their workmen, which was received by the Central Government on the 30th April, 1985.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESSET :

Shri I. N. Sinha, Presiding Officer.

Reference No. 74 of 1984

In the matter of Industrial Disputes under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Messrs. Anoopchand Jain and Messrs. Nemi Chand Jain, Contractors, Bhawanathpur Limestone Mines of Bokaro Steel Limited and their workmen.

APPEARANCES :

On behalf of the employers :—Shri J. P. Singh, Advocate.

On behalf of the workmen : Shri D. Narsingh, Advocate.

STATE : Bihar. INDUSTRY : Limestone

Dhanbad, the 24th April, 1985

AWARD

The Government of India in the Ministry of Labour and Rehabilitation in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication under Order No. L-29012(17)|84-D.III(B) dated the 18th October, 1984.

SCHEDULE

"Whether the action of Messrs. Anoop Chand Jain and Messrs. Nemi Chand Jain, Contractors of Bhawnathpur Limestone Mines of Bokaro Steel Limited in refusing employment with effect from 16-2-1982 to Sarvasmi Ram Prasad Ram, Bal Govind Mahto, Rajendra Prasad Mahto, Ramswaroop Mahto and Kailash Mahto, Wagon Loaders, is justified ? If not, to what relief are the workmen concerned entitled ?'

The case of the 5 workmen is that they were working under the contractors M|s. Anoop Chand Jain and M|s. Nemi Chand Jain who were the contractors of M|s. Bokaro Steel Ltd., a public sector undertaking under the Government of India for supplying lime stones to M|s Bokaro Steel Ltd. The concerned workmen were working for loading limestone into wagons for despatch to Bokaro Steel City from Bhawanathpur for use in the plant of M|s. Bokaro Steel Ltd. They were piece rated employees and were engaged to work almost every day except on rare occasions when wagons were not supplied for loading. The concerned workmen were in the employment of the contractors since 1975 and had completed 240 days attendance in each calendar year and as such they were in continuous service of the contractors for about 7 years. The concerned workmen along with two other workmen of the contractors had struck work from 12-2-82 to 16-2-82 on account of some demands including lay off compensation. In the presence of the district authorities and a representative of M|s. Bokaro Steel Limited the contractors came to an understanding that all the striking workmen would settle their demands by joint negotiation and the workmen should in the meantime resume work on the afternoon of 16-2-82. The contractors gave employment to all the striking workers except the concerned five workmen on account of their trade union activities and their having taken leading part in the strike. The concerned five workmen were not given employment from 16-2-1982 due to unjustified, illegal, malafide action of the management while allowing the other striking workmen to resume work from 16-2-82. The discharge of the concerned workmen amounts to illegal retrenchment being in violation of Section 25F of the I.D. Act and as such their termination is void ab initio and in operative and the concerned workmen will be deemed to be in continuous employment with the management and are entitled to continuity of service and all back wages.

The case of the contractors (management) is that M|s. Bokaro Steel Ltd. of Steel Authority of India Ltd. has a captive limestone mines at Bhawanathpur in the district of Palamau. The raising of limestone and loading them into railway wagons is done through contractors duly authorised by M|s. Bokaro Steel Ltd. one of the employers M|s. Nemi Chand Jain entered into contract with Bokaro Steel Plant for raising limestone and loading of limestone into railway wagons sometimes in 1977 and his contract ended on 15-5-82. Similarly the other employer M|s. Anoop Chand Jain entered into contract in 1978 which expired in May, 1982. After obtaining the contracts both the contractors employed local labourers for the purpose of raising of limestone and for the purpose of loading limestone into railway wagon. A large number of wagon loaders were engaged for loading limestone into wagons and they used to work in several groups under head man. The system was that each head man was paid for the quantity of work done by the wagon loader under him and it was the responsibility of the head man of the group to receive payment for the work done by the group. The contractors did not maintain any account of the amount paid to each wagon loader and the same was the responsibility of the headman of the group. The supervision of work was done by the supervisors of the principal employers viz. M|s. Bokaro Steel Ltd. and payment of wages used to be in presence of the men of principal employer. The headmen were at liberty to engage any person as wagon loaders in their respective groups and there was no continuity of work of a particular wagon loader through the whole of the year. Some of the wagon loaders used to work under the headman whenever they were free to take up such work and as such the wagon loaders were purely temporary and casual. The attendance of the loaders were never the concern nor the responsibility of the contractors. The contractors had no contract with M|s. Bokaro Steel Ltd. prior to 1977 and 1978 and as such it is wrong to say that the concerned workmen were in the employment of the contractors since 1975. The concerned workmen had not attended for more than 240 days in any calendar year. The concerned workmen had deliberately given up their work as wagon loaders as far back as in May,

1981. The district authorities had not intervened in any strike between 12-2-1982 and 16-2-1982. The concerned workmen were never retrenched by the contractors with effect from 16-2-82 and as such Section 25F of the I.D. Act cannot apply. According to the employers the concerned workmen have no claim.

The question to be decided in this case is whether the contractors were justified in refusing employment to the concerned workmen from 16-2-82.

The contractors have examined one witness in support of their case and the concerned workmen also have examined only one witness Shri Ram Prasad Ram who is one of the concerned workmen. The management has produced documents which have been marked Ext. M-1 to M-3. The concerned workmen have produced documents which have been marked Ext. W-1 to W-4.

Admittedly, the contractors had employed workmen for loading of limestone in the railway wagons for despatch to M/s. Bokaro Steel Plant from Bhawanathpur Limestone mines. It is admitted in para-3 of the management that the five concerned workmen had deliberately given up their work as wagon loaders as far back as in May, 1981. Thus it is the admitted case of the parties that the concerned workmen were at sometime in the employment of the contractors. MW-1 Shri Ayodhya Choubey is the representative of both the contractors at Bhawanathpur since the time of their contract. He has stated that Hazri of the concerned workmen and others used to be maintained. He has stated that a case in respect of a strike and other matters connected with it is pending before the Supreme Court in which both the contractors are parties. According to him all the documents relating to the execution of the contract are filed in the said case before the Supreme Court and that none of the documents which were called for from the contractors on behalf of the concerned workmen are available with the contractors. In his cross-examination he has stated that he does not possess the list of paper filed before the Supreme Court. He has further stated that the papers are at the head office of M/s. Anoop Chand Jain and Nemi Chand Jain and that the head office of the contractors have been informed about this case and he had also informed his headquarters regarding the papers which the workmen have called for. Now the employers of the workmen deny that the concerned workmen had not worked for them but the said fact has been belied by the statement in para-8 of the W.S. of the management in which it is admitted that the concerned workmen had given up their work in May, 1981. WW-1 on the other hand has stated that all the concerned workmen had worked as loaders for the contractors till 11-2-82 and that they had remained on strike from 12-2-82 to 16-2-82 and thereafter the concerned workmen were not taken in employment. Thus in order to establish whether the concerned workmen were working for the contractors till 11-2-82 or not can be shown from the attendance register as MW-1 has stated that Hazri of the concerned workmen and others used to be maintained. The fact that the management did not produce the attendance register and accounts of payment of wages to the concerned workmen shows that the management is suppressing these documents and an adverse inference has to be drawn against the management that the concerned workmen had actually worked for the contractors till 11-2-82.

The other materials also would support the contention of the workmen. MW-1 who is the only witness examined on behalf of the management has stated that he has no personal knowledge if the concerned workmen were either engaged in raising and loading of limestone during the contract of M/s. Anoop Chand Jain and Nemi Chand Jain. He has tried to evad the fact that the concerned workmen were their employees by stating that the headman used to employ the loders and the headman used to maintain their attendance. In my opinion this plea raised on behalf of the management cannot sustain Section 29 of the Contract Labour (Regulation and Abolition) Act 1970 provides for the registers and other records to be maintained. Section 29 of the Act provides that every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed. Thus it will appear that it is the responsibility of the contractor to maintain the attendance register, wage register etc. and not by any mate or sirdar under the contractor. It is clear that the contractors have suppressed the documents which they had to maintain under the statute and now they are trying to show that the management was unaware of the persons employed to work as loaders as the loaders were working at a group under the mate. The management cannot take the advantage of their own faults and as stated by WW-1 it has to be held that the concerned workmen were employed by the contractors till 11-2-82.

MW-1 has stated in examination-in-chief that the workmen had raised an objection before the Collector regarding payment of wages and they had struck work. MW-1 in his cross-examination has denied that the workmen had gone on strike for non-payment of lay off that any agreement was reached after 16-2-82 before the Dy Commissioner between the workmen and the contractors in presence of the representative of Bokaro Steel Ltd. and that the contractors had agreed to take all workmen to their work. WW-1 has stated that there was strike in Bhawanathpur limestone mines from 12-2-82 and continued upto 16-2-82 and that on intervention of the D. C. Daltonganje the workmen were told to resume their duties in presence of the contractors and other details were to be finalised and thereafter all the workmen were taken in the job of the contractors but the concerned workmen were not taken in the job. Ext. W-1 is a petition by the concerned workmen before the D. C. in which it was stated that they were working as loaders since about 7 to 8 years and that there was a strike from 12-2-82 to 16-2-82 in respect of some demands and that on the intervention of the administration all the striking workmen recalled their strike and started working on assurance that their demand would be considered. It is further stated that all other workmen were given employment but the concerned workmen were not given employment. Ext. M-2 is a letter dated 25-3-82 by Anchal Adhikari, Bhawanathpur to the Jain contractors in which it is stated that the contractors had assured to take all the striking workmen in employment but some of the workmen have filed a petition before the management that they have not been given employment and the said officer asked the contractors to give them employment. Ext. M-1 dated 27-3-82 is the reply by the contractors to Anchal Padadhikari, Bhawanathpur in which it is stated that all the workmen who were in employment with them given employment in accordance with the agreement before the Dy. Commissioner, Palamau. These exhibits therefore show that there was a strike of the workmen of the contractors and that the Dy. Commissioner Palamau intervened to take all the striking workmen in employment and these documents therefore support the case of the workmen concerned.

By letter dated 31-5-82 to the ALC(C) Ranchi a reply was sent on behalf of the concerned workmen that never been employed by the contractors and as such there is no question of termination of their services. This letter of the management appears to contain false statement as according to the management's own written statement in paragraph 8 the concerned workmen were in the employment of the contractors atleast till May, 1981. The Overall picture appears to be that the management is trying to support false case and as such the documents in their possession have not been produced as it would have exposed the fulsity of the plea of the management.

It will appear from the statement in para-5 of the W.S. of the management that the contract of both the contractors continued till May, 1982 and as such it will appear that from 16-2-82 to May, 1982 the employers contract was continuing WW-1 has stated that since he was not taken in employment after 16-2-82 it was not possible for him to say till when the contract of the two Jains continued WW-1 has stated that he cannot say if all the workmen who were working under the contractors are still working under the same contractors and he does not know as to who were the contractors in the said mines in 1983, 1984 and 1985 He could only say that the contract of Nemi Chand Jain and Anoop Chand Jain continued till May, 1982. As the contract of the contractors had continued for atleast sometimes after 16-2-82 the concerned workmen also can be given employment in view of the fact that employment was given to the other striking workmen of the contractors. The case of the workmen is that they had worked for more than 240 days in each of the years and there is no cogent evidence adduced on behalf of the management that the concerned workmen had not completed 240 days of attendance in each year and as such

the concerned workmen could not have been removed from employment without notice and notice as contemplated under Section 25 of the I D Act As the contractors have not complied with the provisions of Section 25F of the I D Act, I think that the removal of the concerned workmen from their employment from 16 2 82 is bad and it will be presumed that they are continuing in the employment of the contractors

On the discussions made above I hold that the concerned workmen were working with the contractors M s Anoop Chand Jain and Nemi Chand Jain till 11-2 82 and that although all other striking workmen were given employment the concerned five w rkmen were not given employment as they had taken leading part in the strike In my opinion, the concerned workmen deserve to be reinstated from 16 2 82 as in the case of all other striking workmen and are also entitled to all the benefits which other workmen of the contractors were enjoying till May 1982

Accordingly I held that the action of M/s Anoop Chand Jain and Nemi Chand Jain of Bhawanathpur Limestone Mines of Bokaro Steel Ltd in refusing employment to the concerned five workmen with effect from 16-2-82 is not at all justified and the concerned workmen will be deemed to continue in the employment of the contractors The concerned workmen will further get their dues as indicated above

This is my Award

I N SINHA, Presiding Officer

[No L-29012/17 84-D III(B)]

का. आ. 2299—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिसरा स्टोन लाइम कपनी लि. बिरामितरापुर के प्रबधतंत्र से सम्बद्ध नियोजको और उनके कर्मकारो के बीच अनुबध मे निर्दिष्ट औद्योगिक विवाद मे औद्योगिक अधिकरण, भुवनेशवर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 30 अप्रैल, 1985 को प्राप्त हुआ था।

S O. 2299—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Orissa Bhubaneswar, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bisra Stone Lime Company Limited, Biramitrapur and their workmen, which was received by the Central Government on the 30th April, 1985.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Shri K C Rath, B.L , Presiding Officer, Industrial Tribunal, Orissa.

Industrial Dispute Case No 5 of 1982 (Central)
Bhubaneswar, the 17th April, 1985

BETWEEN

The employers in relation to the management of Bisra Stone Lime Co Limited, Biramitrapur
First party

AND

Their workmen .. Second party

APPEARANCES

Shri D Naik, Advocate — For the first party

Shri Mohinder Dip — Second party

AWARD

Dispute referred to by the Central Government for adjudication under Sub-section 7-A, and Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, vide Notification No L-29001/48/81-D. III (B) dated 10-5-1982 of the Ministry of Labour reads thus :

"Whether the action of the management of Bisra Stone Lime Company Limited, Biramitrapur District Sundergarh in terminating the service of Shri Mohinder Dip, Ex Miner is justified. If not, to what relief is the workman entitle

2 First-party employer is the management Bisra Stone Lime Co. Limited, Biramitrapur, whereas the second-party workman was its miner from 5-2-1975 till 13-9-1977 when his services were terminated by way of discharge on the basis of the report of the Medical Officer of the company that he was unfit to do any work in the mines due to his suffering from epilepsy. He, however, would not admit that he ever suffered from any epilepsy. According to him, his services have been terminated illegally and without any just cause or excuse.

2 The first-party filed a counter stating that in view of the report of its Medical Officer that the second-party was having recurrent attack of fits of epileptic type, it was considered unfit to continue him in employment as there was every likelihood of meeting with accident of serious nature while working the mines and so, his services were terminated by way of discharge with one month's notice.

3. One witness is examined for the second-party and four for the first-party. The witness examined for the second-party is the workman himself He denies that he ever suffered from epilepsy As against his evidence the first-party has examined its Medical Officer as witness No. 2. He has exhibited the relevant entry Exts C series in the Register of Patients and on a reading of the same it appears that the second-party was treated for fits and cold on 11-3-1977, for haemptysis and fits on 3-5-1977 and for fits and haemptysis on 25-6-1977. Cross examination of this witness reveals that the first two entries in the register were made on the information supplied by the first-party, but as regards the entry made on the last occasion it was based on the observation made by him while the second-party was admitted as an indoor patient The written-statement of the first-party shows that the doctor was not sure of the disease the second-party was suffering from He suspected him to be a patient of T B and that is why he referred him to the Ispat General Hospital, Rourkela But when report was received from the I G H that the lungs of the second-party were clear, the doctor had to give up the idea that the second-party workman was suffering from T.B. He examined the second-party on the last

occasion while he was an indoor patient and came to know that he was suffering from epileptic type of fits. Symptom found by him has not been noted in the register. Therefore, it is very difficult to say now whether his observation that the second-party was suffering from epileptic type of fits is or is not correct. Therefore, it is unsafe to hold relying on the evidence of the doctor that the second-party was a patient of epileptic type of fits. This apart, the impugned order of discharge cannot be supported as it is based not on the ground of continued ill-health, but on the ground that it was unsafe to allow him to work in the mines to avoid accident. If that be so, it was a clear case of retrenchment and in that case provisions of Sec. 25-F should have been complied with. But it has not been so done inasmuch as no compensation was paid to the second-party prior to the retrenchment. Therefore, the impugned order terminating the services of the second-party by way of discharge must be held to be neither legal nor justified.

4. In the result, the action of the management in terminating the services of the second-party workman Shri Mohinder Dip is not justified. He be reinstated in service with full back wages.

Award is passed accordingly.

Dated : 17-4-1985.

K. C. RATH, Presiding Officer

[No. L-29011|49|81-D. III(B)]

M. L. MEHTA, Under Secy.

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